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# Decision

**Matter of:** Leidos Inc.

**File:** B-421252.4

**Date:** April 28, 2023

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## DIGEST

Protest alleging that the agency miscalculated proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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## DECISION

Leidos, Inc., of Reston, Virginia, protests the award of a contract to CACI, Inc.-Federal, of Chantilly, Virginia, under request for proposals (RFP) No. H98230-22-R-0002, which was issued by the National Security Agency for network and exploitation analyst services. The protester alleges that the agency erred in the evaluation of proposals and in the conduct of the best-value tradeoff.

We deny the protest.

## BACKGROUND

On February 14, 2022, the agency issued the RFP, which contemplated the award of a single indefinite-delivery, indefinite-quantity, cost-plus-award-fee level of effort and completion contract with a 1-year base ordering period, and four 1-year option periods. Agency Report (AR), Tab 3, RFP at 30, 35, 40, 45, 98. The RFP provided that award would be made to the proposal that represented the best-value to the government on

the basis of four evaluation factors: (1) management; (2) ability to staff; (3) small business participation; and (4) cost. *Id.* at 107-108; AR, Tab 19, Proposal Evaluation Criteria (PEC) at 4. Additionally, the management factor was comprised of three subfactors: program management; talent management; and mission essential services plan. AR, Tab 19, PEC at 4. The solicitation provided that management and ability to staff, when combined, were significantly more important than cost, and that the small business participation factor would be evaluated only on an acceptable/unacceptable basis. *Id.* at 7.

Relevant to this protest, the solicitation provided that the agency would evaluate an offeror's ability to staff by determining "to what extent are the [o]fferor's hourly labor rates by labor category lower than" the government's independent cost estimate (ICE), which was provided to offerors, and that each proposal would be assigned one of five adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 6, 9. Specifically, a rating of "outstanding" would be assigned when "[b]ased on the extent and number of proposed labor rates that are lower than the ICE rates, the risk of unsuccessful performance is low."<sup>1</sup> *Id.* at 6. By contrast, a rating of "good" would be assigned when, "[b]ased on the extent and number of proposed labor rates that are lower than the ICE rates, the risk of unsuccessful performance is low to moderate."<sup>2</sup> *Id.* The solicitation also noted that unrealistically low labor rates "may be viewed as evidence of failure to comprehend the labor rates necessary to recruit or retain qualified contractor personnel or to comprehend the complexity of the contract requirements." *Id.* at 9.

On March 30, 2022, the agency received several proposals, including proposals from CACI and Leidos. Memorandum of Law (MOL) at 4. Following an initial evaluation, the agency made award to CACI on October 12, and Leidos subsequently filed a protest of the agency's award decision with our Office. *Id.* On November 8, the agency indicated that it intended to take corrective action by reevaluating proposals, and we subsequently dismissed as academic Leidos's protest, as well as the protest of another disappointed offeror. *Leidos, Inc., Booz Allen Hamilton, Inc.*, B-421252.1, B-421252.2, Nov. 14, 2022 (unpublished decision).

The agency reevaluated proposals, and CACI and Leidos were evaluated as follows:

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<sup>1</sup> The solicitation defined low risk in this context as "[p]roposal may contain weakness(es) which have little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties." AR, Tab 19, PEC at 6.

<sup>2</sup> The solicitation did not separately define "low to moderate risk," but defined moderate risk in this context as "[p]roposal contains a significant weakness or combination of weaknesses which may potentially cause disruption of schedule, increased cost, or degradation of performance. Special contractor emphasis and close Governmental monitoring will likely be able to overcome difficulties." AR, Tab 19, PEC at 6.

	<b>Leidos</b>	<b>CACI</b>
<b>MANAGEMENT APPROACH</b>	Good	Good
<b>Program Management</b>	Good	Good
<b>Talent Management</b>	Good	Good
<b>Mission Essential Services Plan</b>	Acceptable	Acceptable
<b>ABILITY TO STAFF</b>	Good	Outstanding
<b>SMALL BUSINESS PARTICIPATION</b>	Acceptable	Acceptable
<b>PROBABLE COST</b>	\$2,419,316,682	\$2,490,747,403

AR, Tab 36, Source Selection Decision (SSD) at 5.

With respect to the agency’s evaluation of Leidos’s proposal under the ability to staff factor, the agency noted that Leidos’s proposed labor rates were lower than the ICE for [DELETED] out of 161, or [DELETED] percent, of labor categories. *Id.* at 9. Of note, the agency found that the average rate variances for [DELETED] of those labor categories were at least two percent lower than the ICE, including [DELETED] labor categories identified as “significant,” which accounted for approximately [DELETED] percent of the total full-time equivalents (FTEs) on the effort. *Id.* Based on these findings, the agency determined that Leidos’s proposed rates presented a low to moderate risk of unsuccessful contract performance, and thus assigned an overall rating of good for the ability to staff factor. By contrast, the agency concluded that [DELETED] percent of CACI’s total labor categories had average rates meeting or exceeding the ICE. *Id.* Based on these findings, the agency determined that CACI’s proposed rates presented a low risk of unsuccessful performance, and thus assigned an overall rating of outstanding for the ability to staff factor.

The source selection authority concluded that, while Leidos and CACI were substantively equal with respect to their management proposals, the ability to staff factor was a significant differentiator between the two proposals. *Id.* at 9-11. As a result, the agency ultimately reaffirmed the award to CACI, concluding that CACI’s ability to staff proposal represented a significantly lower risk of unsuccessful performance that merited paying an approximately 2.9 percent cost premium. *Id.* at 11. This protest followed.<sup>3</sup>

## DISCUSSION

The protester alleges that the agency erred in its evaluation of the ability to staff factor and in its best-value tradeoff decision. First, the protester contends that the agency deviated from the solicitation requirements and applied unstated evaluation criteria by using a rote numerical analysis in lieu of a qualitative risk evaluation. Protest at 14-20.

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<sup>3</sup> The other disappointed offeror that previously challenged the agency’s initial award decision also filed a protest challenging the agency’s second award decision following corrective action. See *Booz Allen Hamilton*, B-421252.3, B-412152.5. Our Office will resolve that protest in a separate decision.

Second, the protester argues that the agency erred in assigning Leidos a rating of “good” for ability to staff because the agency’s evaluation of Leidos’s proposal was internally inconsistent in a way that deviated from the solicitation’s requirements. *Id.* at 20-21. Finally, the protester maintains that the best-value evaluation was flawed because, among other things, it did not involve a qualitative comparison of proposals. *Id.* at 21-22. We address these arguments in turn.<sup>4</sup>

### Numerical Analysis

The protester argues that in conducting its evaluation under the ability to staff factor, the agency performed an impermissibly mechanical quantitative analysis and applied an unstated evaluation criterion. Protest at 14-20. In this regard, the protester argues that the solicitation called for a qualitative assessment of risk, but the agency’s evaluation consisted solely of a counting exercise in which the agency assigned risk to its proposal on the basis of arbitrary and undisclosed percentage cutoffs. *Id.* Specifically, the protester notes that the agency sorted offerors’ proposed labor rates into three categories: rates equal to or higher than the ICE; rates up to 1.99 percent lower than the ICE; and rates more than 2 percent lower than the ICE. *Id.* The protester maintains that the agency mechanically assigned risk based on the number of labor rates that fell into those categories without any substantive analysis of how the rates would actually affect the risk of unsuccessful performance. *Id.* For example, the protester notes that some of its proposed labor rates were only “pennies per hour” lower than the ICE, and the agency has failed to explain why such a small difference poses a meaningful increase in risk. Protest at 16.

The protester argues that this quantitative analysis was impermissible both because the solicitation required a qualitative analysis of risk and because these cutoffs were not disclosed in the solicitation. *Id.* at 16-17. Moreover, the protester argues that the agency’s analysis failed to consider whether Leidos’s proposed labor rates that exceeded the ICE reduced risk in a way that offset the allegedly increased risk of its proposed rates below the ICE. *Id.* at 17-18. Finally, the protester argues that the

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<sup>4</sup> The protester raises several collateral arguments not addressed in this decision. We have considered each of these arguments and conclude they provide no basis to sustain the protest. For example, the protester argues in passing that the agency’s ability to staff comparison improperly relied on fully burdened rates as the basis of comparison. Protest at 17, n.6. The agency responded that the solicitation specifically explained how the agency would normalize rates and conduct the comparison, and that, to the extent the protester is now challenging that methodology, it is an untimely protest of the terms of the solicitation. MOL at 12-13 (*citing* AR, Tab 18, Proposal Preparation Instructions at 8-9). The protester did not respond to the agency’s argument on this point in its comments. Where an agency provides a detailed response to a protester’s assertions and the protester does not respond to the agency’s position, we deem the initially-raised arguments abandoned. *Citrus College; KEI Pearson, Inc.*, B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly we consider this argument to be abandoned, and do not consider it further.

agency failed to reasonably consider that Leidos employs a significant number of individuals under the incumbent effort at or below the rates it proposed, which further underscores its ability to staff the effort at its proposed rates. *Id.* at 18.

In response, the agency contends that the award did not mechanically rely on the percentage categories to assess risk, but rather used them as aids to summarize a significant quantity of data. MOL at 10. Moreover, the agency argues that an analysis of how many labor rates were lower than the ICE and to what extent they were lower was not an undisclosed evaluation criterion, but rather precisely what the solicitation required the agency to assess. *Id.* Concerning the protester's arguments that rates that exceed the ICE should be considered as reducing risk or that it currently employs staff at these rates, the agency argues, in essence, that the solicitation did not contemplate the consideration of either point, as the solicitation specifically contemplated only the analysis of whether--and to what extent--proposed labor rates were below the rates established in the ICE. *Id.* at 13-14.

When 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. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement, without more, does not form the basis for us to conclude that an evaluation was unreasonable. *DynCorp International, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 8.

Preliminarily, we do not agree that the solicitation contemplated or required the kind of qualitative evaluation of risk that the protester proposes. In this regard, the solicitation repeatedly explains that the ability to staff factor evaluation would be based solely on the extent and number of proposed labor rates that were lower than the ICE. See AR, Tab 19, PEC at 6 (noting that adjectival ratings would be "[b]ased on the extent and number of proposed labor rates that are lower than the ICE rates"); see also *Id.* at 9 (explaining that the evaluators would assess "to what extent are the [o]fferor's hourly labor rates by labor category lower than the Government's independent cost estimate (ICE) by labor category for the base and each option period[]" and noting that the "extent and number of variances between the [o]fferor's proposed labor rate and the ICE will impact the assigned adjectival rating").

The protester is correct that the solicitation provides general definitions of risk that apply to both the management and the ability to staff factor, and which discuss an assessment of the "potential to cause disruption of schedule, increased cost or degradation of performance." *Id.* at 6. However, the sections of the solicitation that are specific to the ability to staff factor focus solely on a comparison of whether and to what extent proposed labor rates were below the ICE's rates and contemplate no other evaluation. *Id.* at 6, 9. Put another way, while the solicitation contemplates that the agency would assess risk in terms of the potential to cause disruption of schedule,

increased cost or degradation of performance in both the management and the ability to staff factors, the solicitation proposed to accomplish that assessment with respect to the ability to staff factor specifically by comparing an offeror's labor rates to the ICE and considering the number and extent of any variances. That is to say, reading the solicitation as a whole and in a way that gives reasonable effect to all its provisions, even assuming, for the sake of argument, that the protester were correct that the agency engaged in a purely quantitative comparison of the protester's labor rates to the ICE, the solicitation required no more of the agency provided that it reasonably considered the number and extent of those variances.

Turning to the substance of the analysis the agency performed, the agency compared the protester's labor rates to the ICE, and concluded that [DELETED] of the protester's rates were lower than the ICE, including a significant proportion that were more than two percent lower. AR, Tab 36, SSD at 9. Moreover, the source selection authority (SSA) identified certain labor categories as being "significant" to performance, and noted that the protester's labor rates were more than two percent lower than the ICE for [DELETED] percent of those categories, collectively representing [DELETED] percent of the FTEs for the overall effort. *Id.* Based on the extent to which the protester's labor rates were lower than the ICE, the agency viewed the protester's rates, as a whole, as posing a low to moderate risk to performance. *Id.* at 9-10.

The protester argues, in essence, that without preparing a specific and contemporaneous qualitative analysis of performance risk, the agency improperly assumed that Leidos's labor rates posed a risk to performance simply because they were lower than the ICE rates. We see no merit to this argument when a comparison of labor rates to the ICE is precisely what the solicitation announced would be the basis for determining risk with respect to this factor. The protester does not dispute that its rates are lower in many cases, but rather the protester simply disagrees with the agency's assessment of the risk assigned to the protester's lower rates, which is insufficient to establish the agency erred. See *DynCorp International, LLC, supra*. In short, while the protester invites us to question the agency's evaluative finding that the extent to which Leidos's rates were below the ICE posed a small but meaningful risk, the agency's assessment of risk is not an unreasonable conclusion on the record before us. We see no basis to question the agency's assessment when the agency's evaluation methodology was consistent with the solicitation's evaluation scheme.

Similarly, the protester's claim that the agency's decision to consider the labor rates based on certain numerical cutoffs or categories (such as rates more than two percent lower than the ICE) constituted an unstated evaluation criterion are unavailing. Preliminarily, agencies may properly evaluate a quotation based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation criteria and where there is a clear nexus between the stated and unstated criteria. *SupplyCore, Inc.*, B-411648.2, B-411648.3, Feb. 21, 2017, 2017 CPD ¶ 72 at 9. Here, the solicitation disclosed the ICE to all offerors, and expressly advised offerors that the agency would consider the number of labor rates that were below the ICE and the extent to which they were lower.

See AR, Tab 19, PEC at 6, 9. The solicitation further explained that the extent of the variance would affect the adjectival ratings assigned. *Id.* The only element of the evaluation for which offerors were not on notice was the precise number of labor rates and extent of variance that the agency would consider as creating risk.

But, as a general matter, agencies are not required to disclose all evaluation standards or guidelines for rating proposals as more desirable or less desirable, provided that they are consistent with the announced evaluation criteria. See, e.g., *Open System Science of Virginia, Inc.*, B-410572, B-410572.2, Jan. 15, 2015, 2015 CPD ¶ 37 at 11. The fact that the agency, for ease of discussion, separated the labor rates into groups based on the extent of the variance from the ICE, at best, constitutes such an evaluation standard, and is in any case unobjectionable. Put plainly, an agency must draw the line somewhere, and there is nothing inherently unreasonable about concluding that a salary 2 percent lower than the ICE may increase staffing risk.

Turning to the protester's collateral argument that the agency failed to appropriately consider its labor rates that exceed the ICE, the record does not support the protester's arguments. The solicitation explained that the agency would evaluate the ability to staff factor by determining to what extent the offeror's hourly labor rates were *lower* than the ICE. See AR, Tab 19, PEC at 6, 9. As the agency notes, this is a reasonable focus as higher rates for certain positions would not, logically, offset staffing gaps potentially created by lower rates in others. MOL at 14. In any case, the solicitation was clear that the agency's evaluation would assess risk by determining whether an offeror's rates fell short of the rates in the ICE, and did not contemplate a comparative or offsetting analysis for rates that exceeded the ICE.

More significantly, and contrary to the protester's contention, the record suggests that the agency appropriately considered the fact that many of the protester's rates met or exceeded the ICE. Specifically, the SSA found that approximately [DELETED] percent of the protester's labor rates met or exceeded the ICE and noted that these rates reduced the risk of unsuccessful performance. AR, Tab 36, SSD at 9. While the solicitation limited the scope of the evaluation to focus on rates that were lower than the ICE, the record reflects that the agency considered the protester's rates that exceed the ICE to the limited extent the solicitation permitted the agency to consider them. Accordingly, this protest ground is without merit.

Similarly, the fact that the protester claims that it currently employs staff at or below its proposed rates is simply not relevant to the evaluation announced in the solicitation, which was premised solely on a comparison between an offeror's proposed rates and the ICE, rather than market rates, incumbent rates, or some other metric. Any suggestion that the agency should have considered other extrinsic information amounts to an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.2(a).

## Propriety of Good Rating

Next, Leidos contends that the agency erred in assigning the firm's proposal a rating of good rather than a rating of outstanding under the ability to staff factor because the agency assigned no weaknesses to the Leidos proposal. Protest at 20-21. In this regard, the solicitation defined a "good" rating as involving a determination that the proposal posed "low to moderate" risk. AR, Tab 19, PEC at 6. Further, the solicitation defined a low risk proposal as one that "may contain" weaknesses, but that a moderate risk proposal contained "significant weakness or combination of other weaknesses." *Id.* Accordingly, the protester maintains that, because the agency assigned no weaknesses to its proposal, its proposal merited a rating of outstanding because the agency could not reasonably have concluded that its proposal posed moderate risk (or indeed greater than low risk). *Id.*

The agency responds, first, by noting that a rating of good did not require a finding that the protester's proposal posed moderate risk, but rather that the proposal posed a risk of low to moderate. MOL at 15-22. This language does not, the agency contends, prohibit the agency from assigning a rating of good to an offeror who poses a comparatively low risk. *Id.* More significantly, the agency notes that the solicitation explained that the adjectival ratings and risk findings would be based on an assessment of the extent and number of proposed labor rates that are lower than the ICE rates. *Id.* While the agency assigned no explicit weaknesses to Leidos's proposal, it did identify a significant number of proposed labor rates that were lower than the ICE, some of which were lower to a significant extent and some of which affected significant labor categories. *Id.* The evaluators concluded that this posed meaningful risk, and, therefore, the agency contends that a risk rating of "low to moderate" was appropriate. *Id.*

Where an evaluation is challenged, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Lear Siegler Servs., Inc.*, B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 7. Moreover, our Office has consistently explained that evaluation ratings are merely guides for intelligent decision-making in the procurement process; the evaluation of proposals and consideration of their relative merit should be based upon a qualitative assessment of proposals consistent with the solicitation's evaluation scheme. *Highmark Medicare Servs., Inc., et al.*, B-401062.5 *et al.*, Oct. 29, 2010, 2010 CPD ¶ 285 at 19.

Preliminarily, we agree with the agency that a finding of low to moderate risk self-evidently does not require a finding of moderate risk. Rather it merely requires a finding that a proposal poses risks somewhere on a continuum from low to moderate risk. Here, the solicitation defines a low risk proposal as one that may or may not contain minor weaknesses, while it defines a moderate risk proposal as one that contains a significant weakness or combination of weaknesses. AR, Tab 19, PEC at 6. While the agency did not label the risks it identified in the protester's proposal as weaknesses, as discussed above, the agency identified meaningful risks in the protester's proposal. It is



not clearly unreasonable on these facts for an agency to conclude that a proposal that involves meaningful risks that do not necessarily rise to the level of weaknesses may nonetheless pose a risk slightly higher than low.

Turning to the substance of the allegation, the solicitation announced in multiple locations that the assessment of risk in the ability to staff factor would be based on the extent and number of proposed labor rates that are lower than the ICE rates. AR, Tab 19, PEC at 6, 9. It is uncontested that Leidos's proposed labor rates were lower than the ICE rates for numerous labor categories. While, as discussed above, the protester disputes the significance of the extent to which its rates were lower than the ICE, the evaluators found the deviations to be significant and the agency's conclusion on that basis--that the deviations posed some risk of unsuccessful performance--is unobjectionable. Adjectival ratings are only aids to intelligent decision-making, and while the agency did not label its determination of risk in Leidos's proposal a "weakness," the contemporaneous record strongly supports the agency's contention that it identified a risk in Leidos's proposal that the agency considered meaningful. See AR, Tab 36, SSD at 9-10. Accordingly, we see no inconsistency in the agency's conclusion that this aspect of Leidos's proposal posed a low to moderate risk, and that the protester merited a rating of "good" for this factor.

Finally, even assuming, for the sake of argument, that Leidos is correct that the solicitation dictated that its proposal should have received a rating of "outstanding" for the ability to staff factor, it cannot establish a reasonable possibility of competitive prejudice. In this regard, Leidos has failed to demonstrate that the agency's assessment that CACI's proposal presented overall less risk than Leidos's proposal was unreasonable. Competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3. As discussed below, the key discriminator between Leidos's and CACI's proposals was not the adjectival rating itself, but rather the underlying evaluated differences between the proposals. Specifically, the uncontested fact that Leidos's labor rates were lower than the ICE for numerous labor categories, while CACI's were not. As we see no basis to question the agency's substantive assessment of risk as discussed above, Leidos's disagreement with the adjectival rating that its proposal received for the ability to staff factor provides no basis on which to sustain the protest.

### Best-Value Tradeoff

Finally, the protester makes two related arguments concerning the agency's best-value tradeoff. Protest at 21-22; Protester's Comments at 10-11. First, the protester alleges that the source selection decision reflected a lack of qualitative comparison between the offerors, instead focusing purely on adjectival ratings and quantitative measures of labor rate variance. *Id.* Similarly, the protester contends that the SSA never truly considered the extent of the labor rate variances, instead using arbitrary thresholds to assess the variances. *Id.* That is to say, the protester is arguing, in several ways, that the agency

did not consider the actual scope or consequence of any risk posed by Leidos's lower rates. *Id.*

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Client Network Servs., Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9. When reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *The SI Organization, Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14.

Here the protester's argument is, in effect, a restatement of its earlier argument concerning the agency's approach to risk assessment, and we reject the argument here as well, and for the same reasons. The solicitation made it clear that risk under the ability to staff factor would be assessed based on the extent and number of proposed labor rates that are lower than the ICE rates. AR, Tab 19, PEC at 6, 9. The source selection decision did precisely this by documenting and explaining the differences between the proposals with respect to the extent and number of proposed labor rates falling below the ICE's rates, and explaining that the agency identified risk in the protester's proposal on that basis, but that no such risk existed in CACI's proposal because [DELETED] labor rates were lower than the ICE rates. See AR, Tab 36, SSD at 9-12. While the protester fundamentally disagrees with the agency's underlying evaluation, it is simply not accurate to suggest that the agency made no qualitative comparison; the agency made a comparison between a proposal with an identified risk and another with no such risk and concluded it would prefer the less risky proposal. The fact that the risk in question was determined on a quantitative basis is unobjectionable where that was precisely what the solicitation required.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel