U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: MPZA, LLC

File: B-421568.3

Date: December 14, 2023

Edward J. Tolchin, Esq., and Jacqueline Koromah, Esq. Offit Kurman, for the protester.
James Y. Boland, Esq, Michael T. Francel, Esq., and Allison M. Siegel, Esq., Venable LLP, for Eagle Harbor, LLC, the intervenor.
Nathan E. Mires, Esq., and Robert J. Alley, Esq., Department of Justice, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that evaluation was not consistent with the solicitation and that the agency disparately evaluated offerors' proposed staffing and level of effort are dismissed for failing to set forth factually and legally sufficient bases of protest, where arguments are based on protester's misreading of the solicitation and debriefing, respectively.

2. Protest that agency should have rejected awardee's proposal for failing to follow the solicitation's pricing proposal instructions is denied where record shows the protester's contentions to be factually inaccurate, and the agency's evaluation of the awardee's proposal was reasonable and consistent with the solicitation.

DECISION

MPZA, LLC, a small disadvantaged business of Gaithersburg, Maryland, protests the award of a contract to Eagle Harbor, LLC, a small disadvantaged business of Anchorage, Alaska, under request for proposals (RFP) No. 155A00021R00000101, issued by the Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for information technology (IT) support services. The protester challenges the agency's evaluation of proposals and resulting best-value tradeoff.

We dismiss the protest in part and deny the protest in part.

BACKGROUND

On May 27, 2022, using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the solicitation as a set-aside for small disadvantaged businesses through the Small Business Administration's (SBA's) 8(a) program.[1] Agency Report (AR), Exh. 7a, RFP at 1.[2] The solicitation sought proposals for the provision of staff to perform data entry, imaging, indexing, IT, and related support services to five ATF divisions. *Id.* at 1, 13. The RFP contemplated award of a single indefinite-delivery, indefinite-quantity contract with fixed-price labor rates, a minimum guarantee of $1,000, a 1-year base period, and four 1-year option periods. *Id.* at 13.

The solicitation advised that award would be made on a best-value tradeoff basis, considering price and the following non-price factors, listed in descending order of importance: (1) technical/managerial approach; (2) key personnel; (3) past performance; and (4) transition plan. AR, Exh. 7g, RFP §§ L-M at 8. The non-price factors, when combined, were significantly more important than price. *Id.* The technical/managerial approach factor included a staffing plan element. *Id.* at 10. With respect to the staffing plan, the solicitation established an estimated number of labor hours in various labor categories that offerors could use in pricing their proposals, but also permitted offerors to "submit proposals outside of the estimated amount of personnel based on performance measures." *Id.* at 7. The solicitation provided that the agency would evaluate any such customized proposals to determine "whether the proposed level of effort and labor mix are appropriate for the requirements of the PWS [performance work statement] to ensure successful performance and whether the proposed rates per hour are reasonable." *Id.*

After receiving and evaluating initial proposals, including those submitted by MPZA and Eagle Harbor, the agency selected Eagle Harbor for award. Contracting Officer's Statement (COS) at 1. MPZA protested the award decision to our Office on March 27, 2023. In its protest, MPZA challenged numerous aspects of the agency's evaluation of proposed prices and contended that the flawed price evaluation resulted in a flawed best-value tradeoff. *MPZA, LLC*, B-421568, B-421568.2, July 3, 2023, 2023 CPD ¶ 165 at 3. Additionally, MPZA alleged the awardee had an unequal access to information organizational conflict of interest (OCI) stemming from work on another contract for the agency. *Id.* Further, MPZA argued that the awardee gained an unfair competitive advantage from the hiring of a former agency employee. *Id.* Our Office sustained in part, denied in part, and dismissed in part MPZA's protest. *Id.* at 1-2.

Specifically, we sustained, in part, MPZA's challenges to the agency's evaluation of proposed prices. Specifically, we sustained MPZA's contentions that the agency had failed to evaluate price realism or assess the appropriateness of the customized level of effort and labor mix proposed by Eagle Harbor. *MPZA, LLC, supra* at 12. Our decision noted that while the procurement at issue involved a fixed-price contract, the solicitation

---

[1] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the 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) program."

[2] Our citations refer to the Adobe PDF page numbers of documents in the record.

reserved the right of the agency to perform a price realism analysis and the record showed that the agency had chosen to evaluate price realism. *Id.* at 11. The record did not reflect, however, how the agency had analyzed the awardee's proposed pricing for realism. *Id.* Further, we found that the record submitted by the agency lacked sufficient documentation--contemporaneous or otherwise--explaining how the agency assessed the appropriateness of Eagle Harbor's proposed custom labor hours and labor mix. *Id.* Without adequate supporting documentation, we had no basis to conclude that the agency's evaluation was reasonable. *Id.* We recommended that the agency evaluate offerors' proposed customized labor mixes for appropriateness in meeting the requirements of the RFP, consistent with the solicitation and our decision. *Id.* at 22. We also recommended that the agency determine whether it would evaluate price realism, as permitted by the solicitation. *Id.* Regardless of whether the agency chose to include price realism as part of its reevaluation, we recommended that the agency document its reevaluation of proposed prices, and make a new best-value determination. *Id.*

We denied MPZA's other price evaluation challenges, such as that the agency was required to normalize prices for evaluation purposes. *MPZA, LLC, supra* at 7, 9. We also denied MPZA's OCI and unfair competitive advantage allegations. *Id.* at 17, 22. Finally, our prior decision dismissed several other allegations raised by MPZA. *Id.* at 4, 4 n.5, 5, 7 n.6, 9 n.7, 9-10 n.8, 18 n.13, 21 n.14.

Following our decision, the ATF reevaluated existing price proposals--including conducting a price realism analysis. The agency documented its assessments and made a new best-value tradeoff source selection. COS at 3; AR, Exh. 28, Price Consensus Report at 1, 5. The final evaluation results for MPZA's and Eagle Harbor's proposals were as follows:

	MPZA	**Eagle Harbor**
Technical/Managerial Approach	Exceptional	Exceptional
Key Personnel	Exceptional	Exceptional
Past Performance	Very Relevant	Relevant
Transition Plan	Exceptional	Exceptional
Price Responsiveness and Realism	Responsive Realistic	Responsive Realistic
Total Evaluated Price	$183,095,103.02	$178,580,961.60

AR, Exh. 29, Best-Value Decision Document at 3-4.

The contracting officer, as the source selection authority (SSA), concluded that while "Eagle Harbor was rated one level lower" than MPZA under the past performance factor, Eagle Harbor's proposal "showed similar scope, magnitude, and complexities." *Id.* at 5. As a result, the SSA considered the "technical proposals [to be] approaching equality as both vendors have shown significant past performance with similar type contracts." *Id.* The SSA "determined that a price premium of 2.5 [percent] or $4.5 million for the minor technical difference of a Past Performance rating of Very Relevant compared to Relevant [wa]s not in the best interest of the Government," and selected

Eagle Harbor for award "based on their lower price and their proposal reaching technical equality with MPZA." *Id.* After being notified of award and receiving a written debriefing, MPZA filed this protest with our Office. COS at 2.

DISCUSSION

The protester advances four primary allegations in challenging the agency's evaluation and award decision. First, the protester argues that the evaluation of staffing and labor mix (*i.e.* level of effort) by the technical evaluators, without a separate evaluation by the price evaluation team, was inconsistent with the solicitation, which MPZA asserts required independent technical and price evaluations. Protest at 8-10. Second, the protester contends that the agency evaluated in a disparate manner by assessing MPZA's level of effort through comparison to the independent government cost estimate (IGCE) while assessing Eagle Harbor's level of effort through comparison to historical contract information rather than the IGCE. *Id.* at 10-11. Third, the protester maintains that the agency should have rejected Eagle Harbor's price proposal for failure to comply with several of the solicitation's instructions, which MPZA claims made it impossible for the agency to conduct a reasonable price analysis. *Id.* at 11-14. Fourth, the protester challenges the agency's best-value determination as fundamentally flawed due to the errors alleged in the underlying evaluation. *Id.* at 14. While we do not discuss every permutation of the protester's numerous allegations, we have considered them all, and find that none provides a basis to sustain the protest.

Dismissed Allegations

The agency and Eagle Harbor, request that we dismiss the protest. Agency Req. for Dismissal; Intervenor Req. for Dismissal. As explained below, we agree that dismissal is appropriate for the first and second protest grounds, which, respectively, allege (1) that it was improper for the technical team, rather than a separate price team, to evaluate offerors' level of effort, and (2) that the agency evaluated level of effort disparately.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, and that those grounds be legally and factually sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. In this regard, when a protester's allegations are based on speculation, factual inaccuracies, or flawed legal assumptions, we will summarily dismiss a protest without requiring the agency to submit a report. *Xenith Group, LLC*, B-420706, July 14, 2022, 2022 CPD ¶ 184 at 3.

Relevant to MPZA's first protest allegation, the debriefing provided to MPZA indicated that the technical evaluators assessed offerors' proposed staffing levels and labor mixes, and concluded that the customized staffing level and labor mix proposed by

Eagle Harbor presented a low risk of unsuccessful contract performance. Protest at 9. The protester contends that the evaluation of staffing levels and labor mix by the technical evaluators, as opposed to a separate price evaluation team, was inconsistent with the solicitation, which MPZA asserts required independent technical and price evaluations. *Id.* at 8-10. The agency and intervenor request dismissal of this argument as legally insufficient because it is based on a facially erroneous representation of what the solicitation required. Agency Req. for Dismissal at 1-2; Intervenor Req. for Dismissal at 1-3. Specifically, the intervenor asserts that the protester's "argument is based on an imaginary or fabricated entitlement to an evaluation procedure that does not exist." Intervenor Req. for Dismissal at 1; *see also* Agency Req. for Dismissal at 2 ("the Protester has made up a solicitation requirement which does not exist"). We agree.

In support of its argument that the solicitation required independent technical and price evaluation teams, MPZA cites to section L of the solicitation, which set forth the instructions to offerors. Resp. to Reqs. for Dismissal at 1, *citing* AR, Exh. 7g,. RFP §§ L-M at 2. The protester notes that the solicitation required offerors to submit proposals in multiple volumes--*e.g.,* technical, price--and provided that "[i]nformation shall be confined to the appropriate section to facilitate *independent* evaluation." *Id.* (emphasis added). The protester contends that this "statement has meaning"; that is, the statement set forth "the requirement of an 'independent evaluation' of each section, including Price v. Technical/Managerial." Resp. to Reqs. For Dismissal at 1-2.

The agency and intervenor explain that nothing in section M of the solicitation, which set forth the evaluation criteria, provided that the agency would establish separate technical and price evaluation teams. Agency Req. for Dismissal at 2; Intervenor Req. for Dismissal at 1-2. Rather, section M provided that "[t]he *agency* will evaluate the completeness and feasibility of the staffing plan" and that "[t]he *government* reserves the right to" evaluate price realism. AR, Exh. 7g, RFP §§ L-M at 10, 13 (emphasis added).

As an initial matter, we find nothing in the solicitation--or for that matter, in any procurement law or regulation--supporting the protester's contention that the phrase, "to facilitate independent evaluation" required the agency to establish separate teams to evaluate the technical and price proposals. Our decisions have explained that information provided in section L of an RFP is not the same as evaluation criteria in section M; rather than establishing minimum evaluation standards, section L generally provides guidance to assist offerors in preparing and organizing their proposals. *University Research Co., LLC*, B-294358.6, B.294358.7, Apr. 20, 2005, 2005 CPD ¶ 83 at 18. Simply put, any information required in section L--such here, proposal formatting instructions--does not have to correspond to the evaluation criteria in section M. *Id.*

Moreover, notwithstanding the protester's bald assertion that "[t]echnical evaluators are not competent to do a pricing evaluation," there is nothing inherently improper with technical evaluators assessing offerors' pricing and staffing plans to determine whether the proposed labor mixes and level of effort were sufficient to meet the solicitation requirements. Protest at 10. Because MPZA's first argument--that it was improper for the technical team to evaluate level of effort--is based on an incorrect reading of the solicitation, we dismiss this allegation as failing to set forth a legally and factually sufficient basis of protest. 4 C.F.R. §§ 21.1(c)(4) and (f); *see e.g., Xenith Group, LLC, supra* at 3 (dismissing evaluation challenge "based on a fundamental misunderstanding of the solicitation's two-step process" for evaluating proposals).

Turning to MPZA's second allegation of unequal treatment, as noted above, the protester contends that the agency evaluated in a disparate manner when ATF used the IGCE to assess MPZA's level of effort and staffing mix but used historical contract information in its assessment of Eagle Harbor's level of effort and staffing mix. Protest at 10-11. The agency and intervenor request dismissal of this contention as insufficient to state a valid basis for protest because it is based on MPZA's misreading of language from its debriefing and therefore entirely unsupported. Agency Req. for Dismissal at 3; Intervenor Req. for Dismissal at 3-4. We agree that dismissal is appropriate.

MPZA supports its disparate treatment argument with two statements from its debriefing. First, with respect to MPZA's evaluation, the debriefing stated:

> The Government evaluated the total hours in comparison to the Government Estimate to evaluate the level of effort and labor mix. MPZA proposed number of yearly hours is 1.2 [percent] more than the IGCE. The Government determines that the total proposed labor hours is adequate as the proposed hours are closely matched to the IGCE which was based on historical contract information. This difference is minor and does not cause the Government concern.

Protest at 10, *citing* AR, Exh. 31, Post-Award Debriefing at 5. Second, with respect to Eagle Harbor's evaluation, the debriefing advised:

> The Government also evaluated the total hours in comparison to the Government's estimate by analyzing the customized level of effort Eagle Harbor proposed. The Government determined the proposed annual hours to be realistic and reasonable, based on historical contract information.

Protest at 10, *citing* AR, Exh. 31, Post-Award Debriefing at 4. According to the protester, these two statements show that the agency evaluated MPZA and Eagle Harbor differently by comparing MPZA to the IGCE but comparing Eagle Harbor to historical contract information instead of the IGCE. Protest at 10-11.

MPZA's argument, however, completely ignores the statement in the debriefing that the agency evaluated Eagle Harbor's "total hours in comparison to the *Government's estimate*"--*i.e.,* the independent *government cost estimate*, or IGCE. Protest at 10 (emphasis added). As this allegation--that the agency evaluated offerors' level of effort in a disparate manner--is based wholly on a counterfactual reading of the debriefing, we dismiss it for failing to set forth a factually sufficient basis of protest. *See e.g., Xenith Group, LLC, supra* at 3 ("where a protester's allegations are based on . . . factual inaccuracies . . . we will summarily dismiss a protest without requiring the agency to submit a report).

Evaluation of Awardee's Price Proposal

The protester maintains that the agency should have rejected Eagle Harbor's price proposal for failure to comply with several of the solicitation's instructions, which MPZA claims prevented the agency from conducting a reasonable price analysis. Protest at 11-12, 14. The agency and intervenor characterize the protester's argument as an attempt to relitigate issues resolved by our Office's decision in MPZA's prior protest, and request dismissal on the basis that this amounts to an untimely request for reconsideration by the protester. Agency Req. for Dismissal at 4; Intervenor Req. for Dismissal at 5; *both citing* 4 C.F.R. § 21.14(b) (requiring requests for reconsideration to be filed within 10 calendar days after the basis for reconsideration is known or should have been known).

In our decision sustaining MPZA's prior protest, we indicated in a footnote that we were not discussing "in detail the protester's various contentions regarding whether Eagle Harbor's pricing template was compliant with the solicitation's submission instructions." *MPZA, LLC, supra* at 11 n.10. We further noted that "[a]lthough, we find that none of the other allegations provided a separate basis to sustain the protest, in light of our recommendation to conduct a new price analysis, the agency may wish to consider verifying the mathematical accuracy of Eagle Harbor's pricing template and the consistency of the template with the firm's pricing proposal volume, as part of the new evaluation." *Id.* The record reflects that the agency did, as part of the reevaluation of pricing proposals, "verif[y] the mathematical accuracy of Eagle Harbor's pricing template and confirmed it was consistent with Eagle Harbors pricing proposal." AR, Exh. 28, Price Consensus Report at 5.

In its protest before us now, MPZA maintains it is challenging this new evaluation, not attempting to relitigate the prior protest. Resp. to Reqs. for Dismissal at 5-6. While there is overlap between MPZA's arguments in the firm's prior protest and the arguments in the current protest, we conclude that MPZA's current protest reasonably can be read as a challenge to the agency's new evaluation assessing the compliance of Eagle Harbor's proposal with the solicitation instructions. Accordingly, we decline to dismiss this protest argument.[3]

---

[3] While MPZA acknowledges that our prior decision "ruled that Eagle Harbor can alter the FTE [full-time equivalent] quantity from the Solicitation's 1,912 hours," the protester still asserts that it was impossible for the agency's new evaluation to find Eagle Harbor's customized labor mix appropriate, because nothing in the awardee's "proposal suggests a different technical approach as a reason to justify its use of [DELETED] hours" per FTE, rather than the 1,912 provided for in the solicitation. Protest at 12-13. The agency (continued...)

Turning to the merits of the protester's argument, MPZA asserts Eagle Harbor's price proposal failed to conform to the solicitation's instructions in several ways. Protest at 11-12, 14. While we do not address all the arguments made by MPZA in pursuing this allegation, we find them all to be without merit. Below, we discuss two representative examples.

At the outset, we note that the manner and depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Gentex Corp.-Western Operations*, B-291793 *et al.*, Mar. 25, 2003, 2003 CPD ¶ 66 at 27-28. In reviewing a protest against the propriety of an evaluation, we will review to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. *Decisive Analytics Corp.*, B-410950.2, B-410950.3, June 22, 2015, 2015 CPD ¶ 187 at 11.

As a first example, MPZA contends that Eagle Harbor "failed to 'show hourly rates easily broken out per labor category,' and failed to show its fixed-price 'broken out separately,'" as required by the solicitation. Protest at 11, *citing* AR, Exh. 7g, RFP §§ L-M at 7. In support of this argument, MPZA notes that "Eagle Harbor proposed hourly rates, but then 'proposed a Best Customer Fixed Price Discount of approximately [DELETED] [percent], aside from a rounding variance.'" Protest at 12, *citing* AR,

---

and intervenor request dismissal of this argument as an attempt to reraise allegations resolved by our prior decision. Agency Req. for Dismissal at 7; Intervenor Req. for Dismissal at 5-6. Here, we agree that dismissal is appropriate.

Our prior decision concluded that offerors were permitted to submit proposals using other than the labor estimates provided in the solicitation, and found "that the agency was not required to normalize prices" as part of its evaluation. *MPZA, LLC, supra* at 9. Further, we dismissed, as an untimely challenge to the solicitation, MPZA's contention "that the agency was required to use the same number of labor hours or the same number of FTEs [full-time equivalents] to evaluate offerors on a common basis." *Id.* at 9 n.7. While MPZA attempts to frame its current protest argument as a challenge to the agency's new evaluation, the protester's contentions remain focused on the propriety of Eagle Harbor proposing a different number of labor hours per FTE than the agency used in its solicitation estimates. As we previously explained, deviations from the solicitation's labor estimates were permitted, and this conclusion was unaffected by the agency's corrective action following our decision sustaining MPZA's prior protest. In this instance, MPZA's attempt to relitigate this question in the context of the agency's new evaluation is, as the agency asserts, an untimely request for reconsideration. *See e.g., ENGlobal Gov. Servs., Inc.*, B-419612.3, Dec. 15, 2021, 2022 CPD ¶ 12 at 6 (dismissing as an untimely request for reconsideration protester's challenge to an agency's past performance evaluation where that challenge had been raised and denied in a prior protest to our Office). Accordingly, we dismiss this portion of MPZA's argument that the agency should have rejected Eagle Harbor's proposal for failure to conform to the solicitation.

Exh. 3g, Awardee Price Spreadsheet at *NTC cost break out* Row 51, *FESD cost break out* Row 24, *FATD cost break out* Row 24, *OSII Cost break out* Row 24, *NFA cost break out* Row 30. MPZA maintains that through application of this discount "Eagle Harbor avoided showing its actual proposed 'hourly rates'" or fixed-price and submitted a proposal with "no clarity," resulting in a situation in which "a price realism analysis could not be reasonably conducted." Protest at 12.

The agency responds that Eagle Harbor's pricing spreadsheet "clearly stated as a firm-fixed-price" as well as "[a]ll hourly rates for the positions proposed." COS at 6. The agency also notes that in the solicitation "[t]here was no restriction to providing a Best Customer Fixed Price Discount," that Eagle Harbor's proposed rates were "in accordance with the Service Contract Act," the firm's price proposal "met all requirements of the solicitation instructions." *Id.* Indeed, the record reflects that "Eagle Harbor's hourly rates were reviewed, and they meet or exceed the Service Contract Act for the Martinsburg, WV area provided in the solicitation." AR, Exh. 28, Price Consensus Report at 5. Also, the evaluators noted that "[e]ach task Program Office reviewed the Eagle Harbor proposed hourly rates for each position compared to the hourly rates listed in the IGCE and did not note any major variances that would cause concerns with contractor performance or retention." *Id.*

Looking at Eagle Harbor's pricing spreadsheet, it is clear that the awardee proposed hourly rates for each of its proposed labor categories. *See e.g.,* AR, Exh. 3g, Awardee Price Spreadsheet at *NTC cost break out* Column G, Rows 7-39. We also note that Eagle Harbor included a fixed-price "Subtotal" in its spreadsheet, to which it then applied its offered "FFP [firm-fixed-price] Discount" to arrive at its "Total Per Year." *See e.g., id.* at Columns A and H, Rows 46-48. Specifically, Eagle Harbor's proposal explained it "proposed a Best Customer Fixed Price Discount of approximately [DELETED] [percent], aside from any rounding variance," and that "[t]his discount . . . includes savings for management efficiencies as well as attrition." *Id.* at Row 51. Thus, contrary to MPZA's claim that Eagle Harbor's proposal lacked clarity about the offered discount, it specifically stated that the discount was being offered as a "*Fixed Price Discount*." *Id.* (emphasis added).

Further, Eagle Harbor explained the basis of the discount--savings from "management efficiencies as well as attrition"--making clear that it was offering only a fixed-price cost-cut to the government, without any associated hourly-rate cut to employee pay. *Id.*; *see also* Memorandum of Law (MOL) at 19-20. MPZA's contentions regarding Eagle Harbor's alleged failure to comply with the solicitation instructions are contradicted by the record, and we deny them accordingly. *See e.g., USIS Worldwide, Inc.*, B-404671, B-404671.3, Apr. 6, 2011, 2011 CPD ¶ 92 at 5-6 (denying as without merit protest that awardee should have been found technically unacceptable where protester's argument was based on factually inaccurate allegations); *Lifecare Mgmt. Partners*, B-297078, B-297078.2, Nov. 21, 2005, 2006 CPD ¶ 8 at 8 (denying protest that agency overlooked a deficiency in awardee's proposal where alleged deficiency was factually inaccurate as record clearly established that proposal included the purportedly missing requirement).

As a second example, MPZA claims that Eagle Harbor failed to price all of the required contract line item numbers (CLINs). The protester maintains that Eagle Harbor failed to propose a price for CLIN 4, specifically taking issue with the agency's conclusion that Eagle Harbor priced CLIN 1 and CLIN 4 together. Protest at 13-14. The agency responds that, as permitted by the solicitation, Eagle Harbor added [DELETED] FTEs to perform the duties associated with CLIN 4 and added these costs to CLIN 1 as both CLINs relate to the same program of ATF's National Tracing Center (NTC) Division--NTC Connect. MOL at 24.

As relevant here, the solicitation set forth requirements, personnel descriptions, and workload estimates for provision of IT support services to the ATF's National Tracing Center Division (NTC) as "Task 1." AR, Exh. 7b, PWS at 21-53. A subset of these tasks were specific to NTC Connect, an internet-based firearms tracing program for which the successful offeror would be required "to provide maintenance and support services in order to maintain a complete turnkey solution for the NTC Connect program." *Id.* at 30-33. With respect to pricing, the solicitation included one CLIN for the overarching NTC work (CLIN 1, "Task One National Tracing Center NTC") and a second distinct CLIN for the subset of NTC Connect work (CLIN 4, "Task One National Tracing Center NTC - NTC Connect Operations & Maintenance"). RFP at 6.

Confusingly, while the solicitation broke out the NTC work and NTC Connect work as separate CLINs, the labor estimate pricing spreadsheet template provided in the solicitation included an "NTC cost break out" price sheet but did not include a separate cost break out price sheet for the "NTC Connect" work. AR, Exh. 7e, RFP attach. D, Estimated Hourly Rates per Task. During the solicitation's question and answer (Q&A) period, the agency was asked the question: "Please confirm that the personnel descriptions in the PWS and in Attachment D do not reflect the staffing and support required for CLIN [4] - NTC Connect Operations and Maintenance." AR, Exh. 8, RFP Q&A at 74, Q. No. 285. In response, the agency attempted to clarify the solicitation as follows:

> FTEs covered in Attachment D may be used to support the NTC Connect CLINs. FTEs in Attachment D -Task One NTC are not exclusively for the NTC Connect effort. Separate NTC Connect CLINs have been established in the solicitation for a FFP quote response to cover the remaining effort.

Id.

The record shows that Eagle Harbor included base year total pricing of $[DELETED] for CLIN 1 and $[DELETED] for CLIN 4 in its price proposal. AR, Exh. 3a, Awardee Price Proposal at 4. In its pricing spreadsheet, Eagle Harbor did not include separate price worksheets for CLIN 1 (NTC) and CLIN 4 (NTC Connect), just as the agency's Attachment D pricing template did not include separate worksheets for these CLINs, including instead only a single worksheet for "NTC cost break out."[4] *Compare* AR, Exh. 3g, Awardee Pricing Spreadsheet *with* AR, Exh. 7e, RFP attach. D, Estimated Hourly Rates per Task. Rather, Eagle Harbor included [DELETED] additional FTEs in its CLIN 1 "NTC cost break out" worksheet that were not included in the agency's labor estimate and were meant to address the additional effort specific to the NTC Connect requirement. *Compare* AR, Exh. 3g, Awardee Pricing Spreadsheet at *NTC cost break out* Column A, Rows 37-39 *with* AR, Exh. 7e, RFP attach. D, Estimated Hourly Rates per Task at *NTC cost break out* Column A, Rows 37-39. Eagle Harbor's price spreadsheet listed the total price (after discount) for CLIN 1 as $[DELETED]. *Id.* at Column H, Row 48. This total price, less the combined rates for the [DELETED] NTC Connect FTEs, results in the price offered for CLIN 1 in Eagle Harbor's price proposal.[5]

In sum, when responding to the agency's unclear instructions on how to complete the pricing spreadsheet, Eagle Harbor followed the solicitation's pricing template by including a price worksheet for "NTC cost break out," not including a separate price worksheet for the NTC Connect work (consistent with the agency's own spreadsheet template), adding the FTEs necessary to perform NTC Connect work to the "NTC cost break out" price worksheet, and then segregating the pricing into the two separate CLINs required in offerors' price proposal volumes. In contrast, MPZA chose to deal with the agency's imprecise instructions by inserting a separate price worksheet for "NTC Connect O&M," which was not included in the agency's template spreadsheet. AR, Exh. 2h, Protester Price Spreadsheet. Both offerors' solutions, accounting for the CLIN 4 costs not included in the agency's pricing template, were permissible, and both resulted in proposals that included pricing for both CLINs 1 and 4. That Eagle Harbor chose to modify a different portion of the RFP's pricing spreadsheet than MPZA, in

---

[4] Attachment D to the RFP was a spreadsheet template to be used by offerors in submitting proposed pricing, with hourly rates broken out per labor category. AR, Exh. 7e, RFP attach. D, Estimated Hourly Rates per Task within PWS. The spreadsheet contained five worksheets detailing the cost break out for the five identified PWS tasks: (1) National Tracing Center (NTC) Division, (2) Firearms and Explosives Services Division, (3) Firearms and Ammunition Technology Division, (4) Criminal Intelligence Division, and (5) National Firearms Act Division. Relevant here, the spreadsheet template contained one worksheet for "NTC cost break out" and did not contain a separate worksheet for the CLIN 4 (NTC Connect) requirement.

[5] The prices for the [DELETED] FTEs are $[DELETED], $[DELETED], and $[DELETED], which combined total $[DELETED]. AR, Exh. 3g, Awardee Price Spreadsheet at *NTC cost break out* Column H, Rows 37-39. After applying the [DELETED] percent fixed-price discount offered by Eagle Harbor, the total is reduced to $[DELETED] for CLIN 4 (a negligible $0.30 rounding difference from the CLIN 4 price of $[DELETED] listed in Eagle Harbor's price proposal). MOL at 24. Subtracting this sum ($[DELETED]) from the $[DELETED] discounted total price listed in Eagle Harbor's pricing sheet for both CLINs 1 and 4, results in $[DELETED] as the total discounted price for CLIN 1 (again, the $3.70 difference can reasonably be attributed to rounding variance). *Id.*

accounting for the CLIN 4 costs, does not demonstrate that Eagle Harbor failed to comply with the solicitation's instructions or to price all the required CLINs. We simply find no merit to this argument. *See e.g., AB Int'l Servs., LLC*, B-419727.3, Mar. 21, 2023, 2023 CPD ¶ 79 at 14 (denying argument that awardee should have submitted additional price build-up information, as the protester did, when "protester ha[d] not explained why its proposal should be the standard for comparison rather than the requirements of the RFP"); *Hygeia Solutions Partners, LLC; STG, Inc.*, B-411459 *et al.*, July 30, 2015, 2015 CPD ¶ 244 at 16 n. 11 (finding that protester "interpreted the solicitation's instructions slightly differently than [awardee] [did] not demonstrate that the awardee's submission was contrary to the RFP or that the evaluation was flawed").

In addition to challenging these and other instruction-compliance aspects of Eagle Harbor's price proposal, MPZA argues, generally, that the agency failed to evaluate whether the awardee's "proposed level of effort and labor mix are appropriate for the requirements of the PWS," and that ATF "did nothing 'to ensure [that Eagle Harbor's] proposed prices are realistic, not too low, and mitigate any risk of poor performance on the contract.'" Protest at 11. Further, the protester asserts that "if ATF performed such a pricing analysis, it could not possibly be a reasonable analysis given that Eagle Harbor could not and did not explain its proposal leger de main." *Id.* at 11-12.

The protester's contentions are belied by the record, which shows that Eagle Harbor submitted a pricing proposal in accordance with the terms of the solicitation, and that the agency evaluated the proposed prices for realism as well as assessing the appropriateness of Eagle Harbor's custom level of effort and labor mix. *See generally* AR, Exh. 28, Price Consensus Report at 4-5. In this regard, the protester repeatedly expresses its disagreement with the evaluator's assessment of the awardee's pricing, but MPZA presents no substantive arguments as to why Eagle Harbor's price, which is only 2.5 percent lower than MPZA's own price, is too low to be considered realistic. As such, we find no basis to question the evaluator's assessment of Eagle Harbor's pricing, and deny MPZA's remaining challenges to the agency's price evaluation.

Best-Value Tradeoff

As a final matter, the protester alleges that the agency made an unreasonable best-value tradeoff source selection decision because it relied on flawed price evaluations. Protest at 14. This allegation is derivative of the above-dismissed and denied challenges to the agency's price evaluation. Thus, we dismiss this allegation as derivative allegations do not establish independent bases of protest. *Merrill Aviation & Defense*, B-416837, B-416837.2, Dec. 11, 2018, 2018 CPD ¶ 421 at 10 (dismissing challenge to source selection decision as derivative of denied challenges to the agency's technical evaluation).

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez
General Counsel