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Decision

Matter of: T&H Services, LLC

File: B-420458.7; B-420458.8; B-420458.9

Date: January 10, 2024

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Kelly R. Masters, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.

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DIGEST

1. Protest arguing that agency conducted misleading discussions is denied where discussions were meaningful, led the protester into the general areas of its proposal requiring amplification or revision, and did not mislead the protester into responding in a manner that did not address the agency's actual concerns.
 2. Protest challenging the agency's evaluation under the technical suitability subfactor is dismissed as untimely where the protest was filed more than ten days after the basis of protest was known or should have been known.
 3. Protest challenging the sufficiency of the agency's price reasonableness evaluation is denied where the evaluation was based on a comparison of proposed pricing to the independent government estimate.
 4. Protester is not an interested party to challenge other aspects of the evaluation where its proposal was reasonably evaluated as ineligible for award.
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DECISION

T&H Services, LLC, a small business of Juneau, Alaska, protests the award of a contract to Akima Facilities Operations LLC, a small business of Herndon, Virginia, under request for proposals (RFP) No. W9124P-20-R-0007, issued by the Department

of the Army for installation support services to tenants and organizations located at Redstone Arsenal, Alabama. T&H challenges the agency's conduct of discussions, and the agency's evaluation of proposals under the technical approach and cost/price factors.

We deny the protest.

BACKGROUND

On July 31, 2020, the Army issued the RFP as a competitive 8(a) set-aside pursuant to Federal Acquisition Regulation (FAR) part 19.8 to provide installation support services, including facilities maintenance, heating, ventilation, and air conditioning service, landfill operations, pavement clearance operations, environmental services, supply operations, facilities engineering services and preventative maintenance to tenants and organizations at Redstone Arsenal, Alabama. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2; Agency Report (AR), Tab 6, Initial RFP at 2. The RFP contemplated the award of a contract with fixed-price, cost, cost-plus-fixed-fee, and cost-plus-fixed-fee level-of-effort line items with a 2-month transition-in period, a 1-year base period, and nine 1-year options. AR, Tab 46, RFP amend. 0009 at 3-133; AR, Tab 47, RFP amend. 0009, attach. 16, Sections L & M at 10.¹ The RFP provided for award on a best-value tradeoff basis considering the following evaluation factors: (1) specialized experience; (2) technical approach; and (3) cost/price. RFP at 17.

The solicitation established a two-phase process for award in accordance with the procedures of FAR part 15 governing contracting by negotiation. *Id.* In phase 1, the agency would evaluate proposals under the specialized experience factor and only proposals assessed a rating of "high confidence" would move forward to the second phase. *Id.* In phase 2, the agency would evaluate proposals under the technical approach and cost/price factors, then conduct a best-value tradeoff of proposals based only on the phase 2 factors. *Id.* The RFP provided that the technical approach factor was significantly more important than cost/price. *Id.*

The agency was to evaluate proposals under the technical approach factor considering three subfactors: (1) technical suitability; (2) preventative maintenance capability; and, (3) management capability. *Id.* at 19-23. For each subfactor, the agency was to evaluate the adequacy of each offerors' response, which the RFP defined as "whether the Offeror's methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the RFP." *Id.* at 19. For overall technical approach and the three technical approach subfactors, the RFP provided that the agency would assign a technical/risk rating of outstanding, good, acceptable,

¹ The agency amended the solicitation nine times. Unless otherwise noted, all citations to the RFP in this decision are to the final revised sections L and M of the RFP, which are contained in attachment 16 to RFP amendment 0009 and provided by the agency at Tab 47 of its report. For clarity, citations to solicitation documents in this decision refer to the electronic page numbers of the Adobe PDF documents provided by the agency.

marginal, or unacceptable. *Id.* at 19, 23. The RFP specified that, to receive consideration for award, a proposal must be assigned a technical/risk rating of acceptable or higher for the technical approach factor and each component subfactor. *Id.* at 18.

As relevant here, the Army was to evaluate proposals under the technical suitability subfactor by considering “the Offeror’s described approach and rationale for staffing.” *Id.* at 21. The RFP specified that the agency would compare each offeror’s proposed operational work order (OWO) and heating and cooling staffing to historical workloads, “identify the areas with significant differences (over 20 [percent] variance),” then analyze those identified areas “based on the Offeror’s technical approach and rationale” to determine adequacy. *Id.* The RFP advised that any failure of a “proposal to provide sufficient substantiation of stated claims or program efficiencies will be considered invalid and will be evaluated as a risk for accomplishment of contract requirements.” *Id.* at 21-22.

On July 5, 2022, the Army issued amendment 0007 to the RFP, which revised the solicitation’s proposal submission instructions and evaluation criteria, and updated several of the solicitation’s technical exhibits. See AR, Tab 35, RFP, amend. 0007 at 2. On or before the RFP’s August 15, 2022 closing date, three offerors submitted revised proposals in response to the amended solicitation, including T&H and Akima. COS/MOL at 3; AR, Tab 36, RFP amend. 0007, attach. 16, Sections L & M at 3. After evaluating the revised proposals, the Army conducted discussions with all three offerors and requested final proposal revisions. COS/MOL at 26; AR, Tab 42, RFP amend. 0008 at 2.

As relevant here, the Army evaluated T&H’s and Akima’s final proposals as follows:

	T&H Services	Akima
Specialized Experience	High Confidence	High Confidence
Technical Approach	Marginal	Outstanding
Technical Suitability	Marginal	Outstanding
Preventative Maintenance	Marginal	Good
Management Capability	Outstanding	Outstanding
Total Evaluated Price	\$465,427,392	\$549,143,728

AR, Tab 115, Source Selection Decision Document (SSDD) at 7; COS/MOL at 27.

As relevant here, the agency assigned T&H’s proposal a marginal rating under the technical suitability subfactor based on a significant weakness related to T&H’s proposed reduction in OWO and heating and cooling staffing compared to historical averages. AR, Tab 110, T&H Technical Approach Consensus Evaluation at 12-13. The agency assessed T&H’s proposal a significant weakness under this subfactor for “insufficiently justified significant understaffing” of OWO and heating and cooling utility requirements. *Id.*

The source selection authority (SSA) independently assessed the proposals and reviewed the reports prepared by the source selection evaluation board and source selection advisory council (SSAC). AR, Tab 115, SSDD at 16. The SSA agreed with the evaluator's assessments, specifically noting that T&H's proposal was ineligible for award because it had been assigned marginal ratings under both the technical suitability and preventative maintenance subfactors. *Id.* at 18. The SSA concluded that Akima's proposal provided the best value and was the only awardable proposal under the terms of the solicitation. *Id.* at 19.

On September 20, 2023, the Army notified T&H of the award to Akima and subsequently provided T&H a debriefing. AR, Tab 95, T&H Debriefing Request; COS/MOL at 29. This protest followed.

DISCUSSION

T&H raises various challenges to the Army's award to Akima, including that the Army failed to conduct meaningful discussions regarding the protester's proposed staffing under the technical suitability subfactor and that the Army failed to properly document its determination that Akima's price was fair and reasonable. For the reasons discussed below, we find no basis on which to sustain T&H's protest.²

Meaningful Discussions

T&H contends that the Army failed to conduct meaningful discussions under the technical suitability subfactor because it "did not adequately or fully communicate" the agency's concerns regarding T&H's proposed OWO and heating and cooling staffing. Protest at 18; Comments at 4-5. T&H concedes that it understood "that more personnel were desired" but maintains that "the magnitude of the perceived deficit, and its importance to performance as a whole, was not meaningfully communicated to T&H." Protest at 16. The protester summarizes the Army's discussions on this point as "a general, unspecified concern about staffing." *Id.*

Discussions, when conducted, must be meaningful; that is, they must identify deficiencies and significant weaknesses that exist in an offeror's proposal. *Vectrus Sys. Corp.*, B-412306.2, B-412306.3, Jan. 6, 2017, 2017 CPD ¶ 37 at 10; FAR 15.306(d). This requirement is satisfied when an agency leads an offeror into the areas of its proposal that require amplification or revision. *Vectrus Sys. Corp.*, *supra* at 11. In this regard, we have repeatedly noted that an agency is not obligated to "spoon-feed" an offeror as to each and every item that could be revised, nor is there an obligation for agencies to conduct successive rounds of discussions until all proposal defects have

² T&H raises other collateral issues. While our decision does not address every issue, we have considered the arguments and find that none provide a basis to sustain the protest. For example, T&H alleged that Akima engaged in an impermissible bait and switch of proposed key personnel, but later withdrew this allegation. First Supp. Protest at 2-3; Comments at 2.

been corrected. See, e.g., *ITT Indus. Space Sys., LLC*, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12; *OMV Med., Inc.*, B-281490, Feb. 16, 1999, 99-1 CPD ¶ 38 at 7.

At issue here, T&H evaluation notice TRS1-B-0006 stated as follows:

Your proposed Staffing Comparative Analysis identified a difference of over 20% in OWO and Heating and Cooling Utility Services base year staffing and historical workloads. You did not clearly articulate how the OWO and Heating and Cooling Utility Services staffing was developed in order for the Government to evaluate why the Staffing Comparative Analysis shows OWO and Heating and Cooling Utility Services staffing at significantly lower levels than historic workloads. These Government's requirements are not expected to change from historic workloads or throughout the Option Periods.

AR, Tab 87, T&H Evaluation Notices at 4.

The evaluation notice also stated that this identified issue was evaluated as a significant weakness and allowed T&H to submit a revised proposal to address the concern. *Id.* The Army specifically requested that T&H "consider the historic OWO and Heating and Cooling Utility Services workload hours" and "clearly explain how the proposed OWO and Heating and Cooling Utility Services staffing hours were developed." *Id.*

T&H's final proposal revision stated that "for the OWO and Heating and Cooling Utility services, we acknowledge the Government's view that our staffing may be lower than necessary to perform the work." AR, Tab 69, T&H Final Proposal Revision at 223. T&H then explained that it adjusted its staffing "to address the Government's concern" and revised its proposal narrative "to address this change and more completely explain our staffing methodology." *Id.* at 51-53, 223. Despite the revisions, the agency again assessed a significant weakness to T&H's proposal for failing to "adequately address its rationale for" OWO and heating and cooling staffing. Tab 110, T&H Technical Approach Consensus Evaluation at 13. The SSA specified that, despite the revisions, "the narrative does not attempt to explain its staffing development to justify performance with fewer staff." AR, Tab 115, SSDD at 12.

On this record, we find that the agency's discussions with T&H regarding its OWO and heating and cooling staffing were meaningful. The agency clearly led T&H into the area of its technical suitability proposal that the agency considered to be a significant weakness. As quoted above, the Army indicated that T&H's proposed staffing was too low compared to historical workloads and that T&H did not "clearly articulate how the OWO and Heating and Cooling Utility Services staffing was developed." AR, Tab 87, T&H Evaluation Notices at 4. Further, T&H submitted a revised proposal acknowledging and specifically attempting to address the Army's concerns. AR, Tab 69, T&H Final Proposal Revision at 51-53, 223. That the agency did not find the protester's proposal revisions to have resolved the significant weakness identified in its

evaluation notice does not render discussions unmeaningful. See AR, Tab 110, T&H Technical Approach Consensus Evaluation at 12-13. Accordingly, we deny this aspect of T&H's protest.

Technical Evaluation

For the first time in its comments, T&H contends that the Army unreasonably assessed a significant weakness based on T&H's proposed OWO and heating and cooling staffing. Comments at 4-5. In this regard, the protester argues that the agency unreasonably ignored "multiple applicable explanations for staffing hour development the proposal provided" including efficiencies based on comparison to similar work at other installations. *Id.* The protester raises this argument as part of its comments on the above-discussed misleading discussions protest ground but did not include the argument in its initial protest. *Compare Id., with* Protest at 18. Accordingly, we consider this to be a separate ground of protest and dismiss it as untimely filed.

Our timeliness rules provide that protests, other than those based on alleged solicitation improprieties, shall be filed not later than 10 days after the basis of the protest is known or should have been known, with the exception of protests challenging a procurement "under which a debriefing is requested and, when requested, is required." 4 C.F.R. § 21.2(a)(2). In addition, our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Battelle Mem'l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CDP ¶ 369 at 9. Here, the record is clear that T&H had all the information it needed to raise this protest ground at the time of its debriefing.

The record demonstrates that the Army informed T&H of the significant weakness assessed for T&H's proposed OWO and heating and cooling staffing in its September 27 debriefing. AR, Tab 98, T&H Debriefing at 18 ("staffing in these areas is significantly reduced from historic averages without explanation in its staffing rationale"). T&H does not point to, and our review of the record does not reveal, any new information produced by the agency report which forms a basis for this protest ground. Accordingly, T&H was required to raise this protest ground within 10 days of its requested and required debriefing. We therefore dismiss this protest ground as untimely where T&H failed to raise it until November 22, more than 10 days after the agency concluded its debriefing on October 2. Comments at 1, 4-5; AR, Tab 105, T&H Debriefing Closing Letter at 1.

Price Evaluation

T&H also argues that the Army failed to conduct a proper price reasonableness analysis. 2nd Supp. Protest at 2-3; Supp. Comments at 1-3. Although T&H acknowledges that the agency compared the prices of proposals to each other and the independent government estimate (IGE), T&H alleges that the agency failed to document evidence of any analysis conducted. Supp. Comments at 2.

A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. *AAR Airlift Grp, Inc.*, B-414690 *et al.*, Aug. 22, 2017, 2017 CPD ¶ 273 at 9. The purpose of a price reasonableness analysis is to ensure that the government does not pay too high a price for a contract. FAR 15.404-1(b); *Crawford RealStreet Joint Venture*, B-415193.2, B-415193.3, Apr. 2, 2018, 2018 CPD ¶ 121 at 9. The FAR includes a non-exhaustive list of permitted price analysis techniques that ensure that the agency pays a fair and reasonable price, including, as relevant here: (1) comparison of prices received, (2) comparison of prices received to historical prices, and (3) comparison of prices received to an IGE. FAR 15.404-1(b)(2). The 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. *Advanced Sys. Tech. & Mgmt., Inc.*, B-291529, Dec. 20, 2002, 2002 CPD ¶ 219 at 2.

Here, the solicitation stated that the agency would evaluate each cost/price proposal to determine whether it is reasonable, that is, whether "it does not exceed that which would be incurred by a prudent person in the conduct of competitive business." RFP at 25. The agency prepared a cost/price summary report which included its evaluation of price reasonableness. AR, Tab 118, Cost/Price Summary Report at 13-17.

The Army first "utilized the price analysis technique at FAR 15.404-1(b)(2)(i), which allows for the comparison of proposed prices . . . when there is adequate competition." *Id.* at 13. As relevant here, the agency compared T&H's and Akima's proposed prices and found that Akima's proposed price was 25.21 percent higher than T&H's.³ *Id.* The cost/price evaluation team "did not consider [Akima's] price to be too high based on this comparison." *Id.* In addition, the SSAC explained that the Army "could not rely on a comparison of proposed prices" to determine the reasonableness of Akima's price because the other proposals were not rated as technically acceptable.⁴ AR, Tab 113, SSAC Report at 38.

³ The RFP required the agency to calculate both a proposed price and a total evaluated price for each offeror. RFP at 24. The proposed price was calculated using the proposed prices for all contract line items in the RFP's pricing template while the total evaluated price used the most probable cost from the cost realism evaluation for the cost-plus-fixed-fee contract line items. *Id.*; see also AR, Tab 118, Cost/Price Summary Report at 7. The agency used Akima's higher proposed price of \$563,901,933 when evaluating price reasonableness rather than the lower total evaluated price reproduced in the table above. AR, Tab 118, Cost/Price Summary Report at 16. The protester has not challenged the agency's use of Akima's proposed price for its reasonableness analysis.

⁴ The cost/price evaluation team "was not privy to the [technical approach] evaluation ratings and assumed that all Offerors' proposals satisfied the Government's expressed requirement when conducting the reasonableness evaluation." AR, Tab 113, SSAC Report at 38.

The agency next compared Akima's price to the IGE. AR, Tab 118, Cost/Price Summary Report at 16-17; AR, Tab 113, SSAC Report at 37-38. The agency found that Akima's price of \$535,469,695 was 12 percent greater than the IGE of \$477,966,952.⁵ AR, Tab 118, Cost/Price Summary Report at 16. The cost/price evaluation team considered this higher price to be reasonable. *Id.* The SSA agreed with the evaluator's assessment. AR, Tab 115, SSDD at 20.

On this record, we do not find any basis to object to the agency's evaluation of price reasonableness. While the protester broadly asserts that the Army's analysis was unreasonable given the difference in proposed prices and complains about the depth of the agency's explanation, the protester has failed to demonstrate any flaw in the agency's methodology or otherwise establish that Akima's price was unreasonably high. In this regard, the fact that Akima's proposed price was higher than other offerors' proposed prices or the IGE, in itself, does not make Akima's price unreasonable. See *TMG Servs., Inc.*, B-410929, B-410929.2, Mar. 25, 2015, 2015 CPD ¶ 121 at 6. Our cases have not established a fixed price differential that must result in a determination by the evaluators that a proposed price is unreasonable, and we decline to do so here. See, e.g., *Ashland Sales and Serv. Co./Macon Garment Inc., a Joint Venture*, B-400466, Oct. 23, 2008, 2008 CPD ¶ 196 at 3.

Remaining Challenges

T&H raised additional protest allegations, including challenges to the Army's evaluation of T&H's proposal under the preventative maintenance subfactor and to the best-value tradeoff. See Protest at 15-19; Comments at 2-6. We dismiss these remaining allegations because T&H, having been found ineligible for award due to its evaluation under the technical suitability subfactor, is not an interested party to raise them.

Under our Bid Protest Regulations, a protester must be an interested party, that is, an actual or prospective vendor whose direct economic interest would be affected by the award of a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party if it would not be next in line for award if its protest were sustained. *BANC3, Inc.*, B-416486, B-416486.2, Sept. 10, 2018, 2018 CPD ¶ 316 at 9.

As noted above, the RFP specified that to be considered for award, an offeror must achieve a rating of acceptable or higher for the technical approach factor and each of its subfactors. RFP at 18. Here, we have found no basis to question the agency's

⁵ The agency calculated the IGE considering historical data, the current applicable wage determination and collective bargaining agreements, and an estimated escalation for option periods. AR, Tab 121, IGE at 15. The IGE did not include a price for the 6-month option to extend services provided for by FAR clause 52.217-8. See *Id.* Accordingly, to compare the proposed prices to the IGE, the agency subtracted the amount included in each proposed price for the potential 6-month extension. AR, Tab 118, Cost/Price Summary Report at 16. The protester has not challenged the reasonableness of the IGE.

evaluation of T&H's proposal as marginal under the technical suitability subfactor or to object to the agency's evaluation of the awardee's proposal. Accordingly, even if we found that T&H's remaining allegations had merit, T&H's proposal would still be ineligible for award. We therefore dismiss the remaining allegations.

The protest is denied.

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General Counsel