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Decision

Matter of: Chugach Range & Facilities Services JV, LLC

File: B-420458.6; B-420458.10

Date: January 10, 2024

Douglas L. Patin, Esq., and Lisa A. Markman, Esq., Bradley Arant Rose & White LLP, for the protester.

Adam A. Bartolanzo, Esq., Alfred M. Wurglitz, Esq., C. Peter Dugan, Esq., and Lauren S. Fleming, Esq., Miles & Stockbridge P.C., for Akima Facilities Operations, LLC, the intervenor.

Kelly R. Masters, Esq., and Wade L. Brown, Esq., U.S. Army Material Command, for the agency.

Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the assessment of a deficiency under the preventative maintenance subfactor is denied where the agency's evaluation was reasonable and consistent with the solicitation criteria.
 2. Protest challenging the agency's evaluation of the awardee's proposal under the technical capability subfactor is denied where the agency's evaluation was reasonable and consistent with the solicitation criteria.
 3. Protest challenging the sufficiency of the agency's evaluation of price reasonableness 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

Chugach Range & Facilities Services JV, LLC, a small business of Anchorage, Alaska, protests the award of a contract to Akima Facilities Operations LLC, a small business of Herndon, Virginia, under request for proposals (RFP) No. W9124-P-20-R-0007, issued by the Department of the Army for installation support services to tenants and

organizations located at Redstone Arsenal, Alabama. Chugach challenges various aspects of the evaluation of proposals under the technical approach and cost/price factors and the agency's price reasonableness determination.

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, HVAC 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 proposals a technical/risk rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 19, 23. The RFP specified that, to receive

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.

consideration for award, a proposal must achieve a technical/risk rating of acceptable or higher for the technical approach factor and each of its subfactors. *Id.* at 18.

As relevant here, under the preventative maintenance capability subfactor, section L of the solicitation required offerors to describe their “technical approach to accomplish the defined Preventative Maintenance Program (PMP) requirements of the performance work statement (PWS).” *Id.* at 6. Notably, section 2.5.2 of the PWS stated that:

The Contractor shall perform all [preventative maintenance orders] for the facilities and equipment listed in Technical Exhibit #03, Technical Exhibit #15, in accordance with the [preventative maintenance (PM)] tasks specified in Technical Exhibit #13. The Contractor technicians shall complete scheduled PM work within five calendar days for monthly PM [tasks], fourteen calendar days for quarterly PM [tasks], and 30 calendar days for semi-annual and annual PM [tasks]. Until the [preventative maintenance order] program as described in paragraph 2.5.4 below is complete, the Contractor shall execute [preventative maintenance orders] in accordance with historical PM data provided in Technical Exhibit #02.

AR, Tab 7, PWS at 91.

The RFP also specified that offerors were to propose a preventative maintenance plan, describe their methodology for determining preventative maintenance staffing, and “justify [their] proposed staffing in terms of the required assets and equipment” from technical exhibits #3 and #15. RFP at 6. In their preventative maintenance plans, offerors were instructed to describe their “methodology and work process to evaluate equipment for implementation of a PMP in [the General Fund Enterprise Business System (GFEBS)] within 90 days” of the contract’s start date.² *Id.*

The agency was to evaluate proposals under the preventative maintenance capability subfactor by considering whether proposals addressed “all aspects required in Section L” and provided clear descriptions of the offeror’s “technical approach to accomplish the defined PMP requirements of the PWS.” RFP at 22. The RFP specified that proposals “that fail to provide a rationale of the methodology used to determine its proposed [preventative maintenance] staffing supported by the assets/equipment and schedules proposed for its PMP will be considered unacceptable.” *Id.*

On September 30, 2020, the Army received five proposals in response to the initial solicitation. COS/MOL at 2. After the agency evaluated proposals under the specialized experience factor, all five proposals successfully advanced to phase 2. *Id.* The agency established a competitive range, conducted discussions with four offerors,

² GFEBS is a “Major Automated Information System for administering and managing the Army’s general funds.” COS/MOL at 8, n.1. GFEBS is designed to provide “web-based real-time transactions and information accessible by all Army organizations worldwide.” *Id.*

and requested final proposal revisions (FPRs). *Id.* at 2-3; AR, Tab 33, RFP amend. 0005 at 1. On December 28, 2021, the agency selected Sunik, LLC for award.³ COS/MOL at 3.

On January 11, 2022, Chugach filed a protest with our Office challenging the Army's award to Sunik. *Id.*; Protest, B-420458, Jan. 11, 2022; Supp. Protest, B-420458.1, Feb. 22, 2022. On March 10, 2022, the GAO attorney assigned to the protest conducted a conference call with the parties to provide outcome prediction alternative dispute resolution (ADR).⁴ During the call, the GAO attorney notified the parties that it appeared the agency's best-value tradeoff was unreasonable and not supported by the record. Thereafter, the agency notified our Office that it intended to take corrective action. We subsequently dismissed Chugach's protest as academic based on the agency's pending corrective action. *Chugach Range & Facilities Services JV, LLC*, B-420458, B-420458.1, March 17, 2022 (unpublished decision).

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 August 15, 2022 closing date, three offerors submitted revised proposals in response to the amended solicitation, including Chugach and Akima. COS/MOL at 4; 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 FPRs. COS/MOL at 26; AR, Tab 42, RFP amend. 0008 at 2.

³ The parties agree that Akima and Sunik are the same entity. Protest at 5, n.1; COS/MOL at 3; Intervenor's Comments at 2. The record is not clear regarding what caused the awardee to initially propose as Sunik and later as Akima, only that the change occurred sometime in 2023. See AR, Tab 128, Akima Facility Services Manager Decl. at 2.

⁴ In an outcome prediction ADR conference, the GAO attorney assigned to the protest will inform the parties as to their views regarding whether the protest is likely to be sustained or denied. Bid Protest Regulations, 4 C.F.R. § 21.10(e); see *First Coast Serv. Options, Inc.*, B-409295.4, B-409295.5, Jan. 8, 2015, 2015 CPD ¶ 33 at 3. The purpose of such outcome prediction conferences is to facilitate the resolution of a protest without a formal decision by our Office. *Id.*

As relevant here, the Army evaluated Chugach’s and Akima’s final proposals as follows:

	Chugach	Akima
Specialized Experience	High Confidence	High Confidence
Technical Approach	Unacceptable	Outstanding
Technical Suitability	Marginal	Outstanding
Preventative Maintenance	Unacceptable	Good
Management Capability	Acceptable	Outstanding
Total Evaluated Price	\$469,354,360	\$549,143,728

AR, Tab 115, Source Selection Decision (SSD) at 7.

The source selection authority (SSA) independently assessed the offerors’ proposals and reviewed the reports prepared by the source selection evaluation board and source selection advisory council (SSAC). *Id.* at 16. The SSA agreed with the evaluator’s assessments, specifically noting that Chugach’s proposal was unacceptable under the preventative maintenance subfactor because Chugach’s proposal “provided insufficient detail to evaluate,” which resulted in the assessment of a deficiency and a significant weakness. *Id.* at 5, 10-11. 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 21, 2023, the Army notified Chugach of the award to Akima and subsequently provided Chugach a debriefing. AR, Tab 95, Chugach Debriefing Request; COS/MOL at 29. This protest followed.

DISCUSSION

The protester generally challenges the agency’s evaluation of proposals and resulting source selection decision. We note that the protester raises several collateral arguments. While our decision does not specifically address every argument, we have reviewed all the arguments and conclude that none provides a basis to sustain the protest.⁵ We discuss several representative issues below.

⁵ For example, we dismiss, as abandoned, Chugach’s allegation that the evaluation of its technical proposal was tainted by bias from one of the Army’s evaluation team members. Protest at 95-98. In its initial protest, Chugach explained that one of its joint venture members was the incumbent contractor for the requirement and has a “protracted history of interactions . . . [that] reflected animosity and antagonistic behavior” on the part of the evaluator at issue. *Id.* at 95. Chugach contends this antagonistic behavior resulted from a November 1, 2018 letter sent by its joint venture member to the Army “express[ing] serious concerns” about the incumbent contract’s administration and complaining that the allegedly biased evaluator and their supervisees had failed to provide required reports and had denied the incumbent the ability to “address, rebut, or correct” contract performance issues. *Id.* at 96.

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Preventative Maintenance Subfactor

The protester challenges various aspects of the Army's assessment of a deficiency to Chugach's proposal under the preventative maintenance subfactor. Protest at 49-61; Comments & Supp. Protest at 34-54. Specifically, the agency's technical evaluation states:

[Chugach's] proposal describes an approach to develop an alternative PMP that assigns its maintenance schedule based on the criticality (or importance) of facilities. However, the Offeror's proposal only describes the process by which the facilities will be analyzed for criticality after contract award (in coordination with the Government) and does not demonstrate what schedule, frequency, or level of [preventative maintenance] is proposed for all assets. This failure to meet the requirement is a deficiency.

AR, Tab 109, Chugach Technical Evaluation at 16-17.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. 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. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

First, the protester contends that the Army applied unstated evaluation criteria in evaluating Chugach's preventative maintenance approach. Chugach alleges that the agency unreasonably assessed the above deficiency for Chugach's failure to describe the schedule, frequency, or level of preventative maintenance it proposed for all assets in its proposal. Protest at 56-57; Comments & Supp. Protest at 52. In this regard, Chugach argues that there was no requirement in the RFP to propose a specific approach for the preventative maintenance of the assets listed in the RFP before award.

The agency provided a detailed response to the allegations in report, explaining that the allegedly biased evaluator never worked in the role alleged by the protester and was never involved with the actions Chugach alleges demonstrate the bias and prejudice. COS/MOL at 77-78. In its comments responding to the agency report, Chugach did not rebut or address the agency's arguments. See Comments & Supp. Protest. Accordingly, we dismiss the protest grounds on which Chugach did not comment as abandoned. See *Tec-Masters, Inc.*, B-416235, July 12, 2018, 2018 CPD ¶ 241 at 6.

Protest at 56. Rather, the protester alleges that “offerors were only required to describe their processes and methodologies for developing the PMP after award.” *Id.*

The Army responds that the RFP’s plain language required it to evaluate whether offerors’ technical approaches accomplished the PWS’s PMP requirements. COS/MOL at 62. The agency explains that the PWS includes requirements for the contractor to perform preventative maintenance for the facilities and equipment listed in specified technical exhibits. *Id.* at 55. The Army argues that it was therefore reasonable to evaluate whether Chugach specifically proposed to meet these preventative maintenance requirements. *Id.* at 55-56, 58.

Where a dispute exists as to a solicitation’s actual requirements, we begin by examining the plain language of the solicitation. *Intelsat General Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. If the solicitation language is unambiguous, our inquiry ceases. *Vectrus Sys. Corp.*, B-419143, B-419143.2, Dec. 23, 2020, 2021 CPD ¶ 138 at 8.

Based on the plain language of the submission instructions, evaluation criteria, and PWS requirements at issue here, we agree with the agency’s interpretation and find no merit in the protester’s argument. In this regard, while Chugach focuses on the RFP requirement for offerors to describe their post-award methodology and work process for “evaluation of equipment for implementation of a PMP in GFEBs within 90 days of contract start” and similar post-award requirements, the protester effectively ignores other proposal submission requirements and evaluation criteria. RFP at 22; *see also*, e.g., Protest at 53 (stating offerors were not “required to have in their proposals a set schedule for performance of preventative maintenance”).

As noted above, section L of the solicitation required each offeror to describe its “technical approach to accomplish the defined” PMP requirements of the PWS. RFP at 6. Notably, section 2.5.2 of the PWS stated that the:

Contractor shall perform all [preventative maintenance orders] for the facilities and equipment listed in Technical Exhibit #03, Technical Exhibit #15, in accordance with the [preventative maintenance] tasks specified in Technical Exhibit #13. The Contractor technicians shall complete scheduled [preventative maintenance] work within five calendar days for monthly [preventative maintenance], fourteen calendar days for quarterly [preventative maintenance], and 30 calendar days for semi-annual and annual [preventative maintenance]. Until the [preventative maintenance order] program as described in paragraph 2.5.4 below is complete, the Contractor shall execute [preventative maintenance orders] in accordance with historical [preventative maintenance] data provided in Technical Exhibit #02.

AR, Tab 7, PWS at 91.

The PWS also noted that the preventative maintenance frequency requirements could be found in technical exhibit #12. *See id.* at 110. The RFP specified that offerors were to propose a preventative maintenance plan, describe their methodology for determining preventative maintenance staffing, and “justify [their] proposed staffing in terms of the required assets and equipment” from technical exhibits #3 and #15. RFP at 6.

The RFP specified that evaluators would analyze all areas of the technical approach for adequacy, which included whether the offeror’s “methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the RFP.” RFP at 19. Further, the agency was to evaluate proposals under the preventative maintenance capability subfactor by considering whether they addressed “all aspects required in Section L” and provided clear descriptions of the offeror’s “technical approach to accomplish the defined PMP requirements of the PWS.” *Id.* at 22.

The plain language of these provisions, when read in light of the solicitation as a whole, is not susceptible to the reading advanced by the protester. The solicitation language relied on by the protester--that offerors were required to propose how they would implement a PMP into GFEBS within 90 days of contract start--does not negate the RFP’s additional explicit instruction that offerors explain how they would meet the PWS’s defined preventative maintenance requirements. To the contrary, this information was necessary because the RFP specifically contemplates that the contractor will be required to immediately start performing preventative maintenance in accordance with the technical exhibits attached to the RFP while working to develop the final PMP to implement in GFEBS. AR, Tab 7, PWS at 91 (“[u]ntil the [PMP] as described in paragraph 2.5.4 below is complete, the Contractor shall execute [preventative maintenance orders] in accordance with historical [preventative maintenance] data provided in Technical Exhibit #02”). Accordingly, Chugach’s argument that its proposal was not required to demonstrate its approach to accomplish the PWS’s specific preventative maintenance requirements--that is, the schedule, frequency, and level of preventative maintenance for the assets identified by the RFP--is unreasonable and contrary to the terms of the solicitation.⁶ Accordingly, we see no merit to Chugach’s argument that the Army applied unstated evaluation criteria.

⁶ Chugach also contends that proposals were evaluated unequally because Akima was not assessed a deficiency under the preventative maintenance capability subfactor despite proposing a similar preventative maintenance approach to the one proposed by Chugach. *See, e.g.,* Comments & Supp. Protest at 49, 59 (alleging Akima similarly proposed to alter preventative maintenance frequencies set forth in technical exhibit #12 during option years and proposed to use the same estimating database to develop its staffing). Like its arguments above, Chugach ignores the crux of why its proposal was assessed a deficiency, namely, that its proposal only explained how it would develop a
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Chugach alternatively argues that the deficiency is not reasonably supported because the agency failed to explain material changes between the original evaluation and the post-corrective action evaluation of Chugach's proposal. See Protest at 58. According to the protester, the substance of Chugach's proposed preventative maintenance approach, the RFP's proposal requirements and evaluation criteria, and the SSA are largely the same as before the agency's corrective action. *Id.* The protester contends that, under these circumstances, it was unreasonable for the agency to assess the above deficiency in Chugach's proposal when the agency had evaluated Chugach's pre-corrective action proposal to be acceptable under the preventative maintenance subfactor with no deficiencies.

In support of this argument, Chugach relies on our decision in *eAlliant, LLC*, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229, where our Office sustained a protest challenging an agency's failure to explain its departure, during a reevaluation, from its earlier, more favorable evaluation findings. *Id.* In *eAlliant*, the record reflected that, during the reevaluation, the agency removed six strengths it previously had assessed in the protester's proposal, despite the proposal remaining essentially the same. *eAlliant, LLC, supra* at 7. The record further reflected that the contemporaneous evaluation documents contradicted the explanation for the different evaluation results that the agency provided during the course of the protest. *Id.* at 10. Based on that record, we found that when the same SSA reviewed significantly different evaluation results of essentially the same proposal, submitted by the same offeror, under the same solicitation, it was incumbent upon the SSA to reconcile or explain the starkly different evaluation conclusions. *Id.* at 11. We noted, however, that our finding was not meant to indicate that an agency is prohibited in its corrective action from revising its evaluations of offerors' proposals, or from reaching different evaluation results or ratings. *Id.* at 12. Rather, under the facts presented in *eAlliant*, we concluded that the SSA was required to provide some explanation as to why the evaluation results were materially different than those reached in the prior evaluations.

PMP after contract award without also explaining how it would meet the preventative maintenance requirements of the PWS from the beginning of contract performance. See AR, Tab 109, Chugach Technical Evaluation at 17 (“[Chugach’s proposal] does not demonstrate what schedule, frequency, or level of preventative maintenance is proposed for all assets.”). On the other hand, Akima proposed to continue performing preventative maintenance based on the existing list of assets on the current schedule while it developed and implemented its long term PMP. AR, Tab 123, Akima FPR at 120. Further, unlike Chugach’s proposal, Akima’s proposal discussed how Akima would use the relevant technical exhibits to determine their proposed preventative maintenance staffing and annual schedule. *Id.* at 128-129. On this record, Chugach has failed to demonstrate that the difference in the agency’s evaluation conclusions did not stem from differences between the offerors’ proposals. See *Nexant Inc.*, B-417421, B-417421.2, June 26, 2019, 2019 CPD ¶ 242 at 10.

Here, the facts are not like those at issue in *eAlliant* in two important respects. First, in *eAlliant*, the agency removed strengths without explanation. Here, however, the agency documented a detailed rationale for the newly identified deficiency as part of its reevaluation. Second, unlike in *eAlliant*, prior to conducting its corrective action evaluation, the agency amended the evaluation criteria related to the area of evaluation in dispute. Before the agency took corrective action, the only specific evaluation criteria listed for the preventative maintenance capability subfactor was, in its entirety, “[t]his subfactor evaluates the Offeror’s Preventative Maintenance Capability.” AR, Tab 34, RFP amend. 0006 at 23. As part of its corrective action, however, the agency amended the RFP to include a detailed set of evaluation criteria specific to the preventative maintenance capability subfactor, including several of the evaluation criteria discussed above. See RFP at 22-23.

Chugach’s suggestion that the agency’s initial evaluation constituted the touchstone against which its final evaluation must compare presents a false premise where the agency materially changed the solicitation’s evaluation criteria after it completed its initial evaluation. *CACI, Inc.-Fed.*, B-418400.7, B-418400.8, Apr. 29, 2021, 2021 CPD ¶ 192 at 8. Rather, the overriding concern in our review of a reevaluation following corrective action is not whether the final evaluation is consistent with the earlier evaluation, but rather, whether it is reasonable and consistent with the solicitation as amended. *HeiTech-PAE, LLC*, B-420049.9, B-420049.10, June 8, 2022, 2022 CPD ¶ 162 at 12. Accordingly, it was not unreasonable, or unsurprising, for the agency to have reached different evaluation conclusions after it changed the relevant evaluation criteria. We therefore see no basis to conclude that it was incumbent upon the SSA to reconcile or explain the different conclusions reached by the evaluation teams.

Further, we see no basis to question the agency’s assessment of a deficiency in Chugach’s proposal under the preventative maintenance capability subfactor. As noted above, the RFP required the agency to evaluate whether an offeror provided clear descriptions of its “technical approach to accomplish the defined PMP requirements of the PWS.” RFP at 22. The PWS specified that the contractor was required to perform preventative maintenance “for the facilities and equipment listed in Technical Exhibit #03, and Technical Exhibit #15, in accordance with PM tasks specified in Technical Exhibit #13.” RFP at 22; AR, Tab 7, PWS at 91. The record demonstrates that Chugach did not propose a specific approach to conduct preventative maintenance in accordance with the assets, facilities, and frequencies identified by the RFP’s technical exhibits.⁷ See AR, Tab 56, Chugach FPR at 103-120. While Chugach may disagree with the agency’s deficiency assessment, it has failed to establish that the Army’s judgement was unreasonable.⁸

⁷ Chugach responds to the assertion that it did not propose such a plan by arguing that it was only “required to describe [its] processes and methodologies for developing the PMP after award.” Protest at 56. As noted above, we disagree.

⁸ To the extent Chugach also raises a supplemental protest ground challenging the agency’s conduct of discussions related to the assessed deficiency, we dismiss it as

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Based on the above, we find the agency reasonably determined Chugach was ineligible for award. See AR, Tab 115, SSD at 18. In this regard, the RFP notified offerors that the assessment of one or more deficiencies would result in a technical risk rating of unacceptable for the relevant factor or subfactor.⁹ RFP at 23. The RFP further 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. *Id.* at 18. Chugach failed to do so and was therefore ineligible for award.

Technical Suitability Subfactor

Chugach next challenges the agency's evaluation of Akima's technical approach under the technical suitability subfactor. Protest at 21-23; Comments & Supp. Protest at 9-17; Supp. Comments at 8-14. Specifically, the protester alleges that the agency should

untimely. The protester argues, for the first time in its comments and supplemental protest, that the agency considered aspects of Chugach's proposed preventative maintenance approach to be acceptable during discussions only to negatively evaluate those same aspects of Chugach's FPR. See Comments & Supp. Protest at 48, 59; see *also* Supp. Comments at 14-19. The protester contends that the agency's actions constitute inadequate and misleading discussions. See, Comments & Supp. Protest at 48.

Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their basis. 4 C.F.R. § 21.2(a)(2). Further, our regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. *22nd Century Technologies, Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 9.

Here, Chugach received the discussion responses from the agency that form the basis for this protest argument no later than May 18, 2023. AR, Tab 84, Chugach Record of Discussions at 15. Further, Chugach knew the deficiencies and significant weaknesses evaluated in its proposal from the agency's debriefing on September 27, 2023. See AR, Tab 97, Chugach Debriefing Slides at 1, 20 (disclosing the deficiency assessed in Chugach's proposal under the preventative maintenance subfactor). Accordingly, Chugach was required to raise this protest ground within 10 days of the closing of its requested and required debriefing. See 4 C.F.R. § 21.2(a)(2). We therefore dismiss this protest ground as untimely since Chugach failed to raise it until November 20, more than 10 days after the agency concluded Chugach's debriefing on October 2. See AR, Tab 104, Chugach Debriefing Closing Letter.

⁹ The RFP defined an unacceptable rating as "Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is un-awardable." RFP at 23.

have concluded that Akima's proposed staffing demonstrated that it failed to understand the requirements of the solicitation. Comments & Supp. Protest at 9-17. In this regard, the protester contends that Akima's technical proposal should have been downgraded based on several areas where the agency concluded both that Akima had proposed more staffing than necessary and that the additional staffing provided no tangible benefit. *Id* at 13-14.

The agency responds that its evaluation was reasonable and consistent with the solicitation's evaluation criteria. COS/MOL at 39-43. The agency argues that it specifically considered whether Akima's staffing plan demonstrated its understanding of the requirements and reasonably concluded that it did. *Id.* at 42. Further, the agency maintains that the overstaffing identified in Akima's proposal did not present any risk to contract performance and that the evaluation criteria did not mandate an overstaffed proposal be rated unacceptable. *Id.*; Supp. COS/MOL at 4-5.

The RFP provided that the agency would evaluate proposed staffing plans to "determine whether or not the Offeror's proposal clearly demonstrates the Offeror's understanding of the requirements and how the Offeror intends to accomplish the requirements." RFP at 21. The RFP required the agency to compare the proposed staffing levels for the base year to the historical workload and analyze the adequacy of areas with more than a 20 percent difference in proposed staffing.¹⁰ *Id.* As noted above, the RFP required the agency to evaluate "whether the Offeror's methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the RFP." RFP at 19.

The record demonstrates that the agency compared Akima's proposed staffing to the historical workload for the requirements and identified areas where Akima proposed to increase staffing by more than 20 percent.¹¹ AR, Tab 120, Akima Technical Evaluation at 24-27. For each of the staffing areas so identified, the agency then analyzed the proposed staffing increase for adequacy and concluded that Akima's staffing was "adequate as proposed."¹² *Id.* The agency specifically concluded that Akima had

¹⁰ Accordingly, the RFP advised offerors to justify any proposed areas of staffing "that significantly lower or increase staffing levels from historic trends," but specifically required only that offerors justify significant differences in staffing for demand maintenance orders (DMOs) because "DMO staffing is considered a critical component of the Offeror's staffing plan." RFP at 21.

¹¹ Akima did not propose to decrease staffing in any staffing area by more than 20 percent. See AR, Tab 120, Akima Technical Evaluation at 24.

¹² For example, when considering a proposed increase in the program management staffing area, the agency stated that Akima's:

Staffing of Program Management is [DELETED] [percent] different from historic averages. As a result, staffing for Program Management was

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proposed to overstaff three staffing areas without the additional staff demonstrating “a tangible benefit in performance.”¹³ *Id.* at 26. However, in each of these three staffing areas, the agency concluded that the staffing was “adequate” and did not present any additional risk. *Id.*

We find no basis to question the agency’s assessments of the merits of Akima’s proposed staffing plan. In short, we do not see how Akima’s potential overstaffing presents a performance risk that the agency should have negatively evaluated when considering Akima’s technical approach. While Chugach maintains that “too high a level of staffing is indeed a risk” and that the agency’s findings of overstaffing without tangible benefit must indicate that Akima does not understand the requirements of the solicitation, see Comments & Supp. Protest at 15-16, Chugach does not point to, nor does our review of the record reveal, any requirement that the agency downgrade an overstaffed proposal under the technical factor.

Chugach also contends that the agency unreasonably evaluated the sufficiency of Akima’s plan for staffing DMO personnel. Comments & Supp. Protest at 16-17; Supp. Comments at 12-14. In this regard, the protester argues that Akima proposed to reduce DMO staffing in each option year, and that the agency failed to consider how such a reduction in staffing would impact Akima’s ability to complete all required DMO tasks. Comments & Supp. Protest at 14-16.

The agency responds that its evaluation of Akima’s DMO staffing was reasonable and consistent with the RFP’s evaluation criteria. Supp. COS/MOL at 6-8. The Army explains that Akima’s proposal clearly laid out its approach to DMO staffing, including how it intended to reduce the number of required DMO tasks in each option year. *Id.* The Army argues that it reasonably considered Akima’s explanation for how it would reduce DMO staffing and that the protester’s disagreement with its conclusions do not provide a basis to sustain the protest. *Id.* at 7.

The protester’s argument is not supported by the record. The RFP provided that any efficiencies of an offeror’s approach, including “the impacts staffing efficiencies for one type of work may have on other program areas, will be evaluated based on the extent to which the proposed approach is feasible to implement and achieve desired results.” RFP at 21-22. In its proposal, Akima proffered that its preventative maintenance approach would lead to the “*re-allocation of DMO labor resources*” towards preventative maintenance in order to reduce the amount of “reactive DMO maintenance” necessary. AR, Tab 123, Akima FPR, Technical Approach at 139. Akima’s proposal explained that

analyzed and was evaluated to be adequate because its proposed quantities and labor mix of personnel is reflective of the requirements of the RFP.

AR, Tab 120, Akima Technical Evaluation at 25.

¹³ These three staffing areas are: [DELETED]. AR, Tab 120, Akima Technical Evaluation at 26.

it had achieved average annual staffing reductions of [DELETED] percent and [DELETED] percent using similar preventative maintenance approaches on two other contracts. *Id.* at 90.

The record demonstrates that, contrary to Chugach's assertion, the agency specifically considered this aspect of Akima's proposal. AR, Tab 120, Akima Technical Evaluation at 12-13, 27. The agency determined that Akima's "technical approach and methodology clearly explains the Offeror's rationale to accomplish DMO requirements." *Id.* at 27. The agency found that Akima's narrative supported "a [DELETED] [percent] reduction in DMO labor hours as a result of its Preventative Maintenance [] program" specifically based on the "comparison of efficiency rates achieved" by Akima at two other project sites. *Id.* While Chugach clearly believes that the agency should have explained its analysis of Akima's proposed DMO staffing in more detail, it has not demonstrated that the Army's evaluation conclusions are unreasonable. On this record, we find no merit to the allegation that the Army failed to reasonably consider Akima's proposed reduction in DMO staffing during the contract's option years.¹⁴ This protest ground is denied.

Price Reasonableness

The protester challenges various aspects of the Army's determination that Akima proposed a reasonable price. Protest at 16-21; Comments & Supp. Protest at 3-9. Chugach contends that the Army's price reasonableness analysis unreasonably ignored a significant difference in Chugach's and Akima's proposed prices, failed to consider whether Akima proposed to overstaff the contract, and was otherwise conclusory and undocumented. *Id.* at 5-9. Chugach also asserts that the agency violated FAR 15.404-1(b)(3) by using an independent government estimate (IGE) to assess

¹⁴ The protester further contends that the agency's acceptance of Akima's DMO staffing reductions was inconsistent with the Army's representations during its discussions with Akima. In this regard, the Army notified Akima during discussions that Akima appeared to have initially proposed too few DMO staff. Comments & Supp. Protest at 16-17. As a result of these discussions, Akima increased its proposed DMO staffing in its FPR, which the agency accepted as resolving the evaluation notice. *Id.* (citing AR, Tab 120, Akima Technical Evaluation at 21). Chugach argues that it was unreasonable for the agency to conclude both that Akima needed to increase its DMO staffing to accomplish all DMO tasks, and that Akima will be able to complete all DMO tasks in the option years with reduced DMO staffing.

The protester's arguments here conflate two distinct aspects of the agency's evaluation. In this respect, it was not inconsistent for the agency to have concluded both that Akima appeared to have initially proposed not enough DMO staffing for the base period and early option years, and that Akima's FPR, which increased DMO staffing, had also reasonably justified that it could achieve DMO staffing efficiencies in option years based on its preventative maintenance approach.

price reasonableness without first determining that comparing Akima's price to the other offerors' proposed prices or to historical prices paid were insufficient methods of evaluating the reasonableness of Akima's price. Comments & Supp. Protest at 6-7.

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 Group, 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 cost/price proposals to determine whether they are reasonable, that is, whether they "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 Chugach's and Akima's proposed prices and found that Akima's proposed price was 36.95 percent higher than Chugach's.¹⁵ *Id.* The cost/price evaluation team "did not consider [Akima's] price to be too high based on this comparison." *Id.* Despite this conclusion, the SSA found that the agency could not rely on a comparison of proposed prices because the other proposals "were aligned to unacceptable technical approaches" which "could not be relied upon to

¹⁵ 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.

validate reasonableness.”¹⁶ AR, Tab 115, SSD at 8-9; see also AR, Tab 113, SSAC Report at 38.

The agency next compared Akima’s price to the IGE.¹⁷ AR, Tab 118, Cost/Price Summary Report at 16-17; AR, Tab 113, SSAC Report at 37-38; AR, Tab 115, SSD at 9-10. The agency found that Akima’s price of \$535,469,695 was 12 percent greater than the IGE of \$477,966,952.¹⁸ AR, Tab 118, Cost/Price Summary Report at 16-17. The cost/price evaluation team considered this higher price to nonetheless be reasonable. *Id.* The SSA agreed with the evaluator’s assessment, finding that the 12 percent difference between Akima’s proposed price and the IGE was “not significant.” AR, Tab 115, SSD at 9.

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, 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 decisions 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.¹⁹ See,

¹⁶ 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.

¹⁷ The agency concluded the IGE was a valid basis for comparison to offerors’ final proposed prices because it was based on the post-corrective action contract requirements that the offerors had used to prepare their final proposals. AR, Tab 118, Cost/Price Summary Report at 16; see also AR, Tab 121, IGE at 1 (noting that the IGE was updated as of April 17, 2023). 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.

¹⁸ The IGE did not include a price for the 6-month option to extend services provided for by FAR clause 52.217-8. See AR, Tab 121, IGE. Accordingly, to compare the proposed prices to the IGE, the agency subtracted the amount each offeror proposed for the potential 6-month extension. AR, Tab 118, Cost/Price Summary Report at 16. The protester does not challenge the reasonableness of the IGE.

¹⁹ We also disagree with the protester that Akima’s evaluated overstaffing evidences the *per se* unreasonableness of Akima’s higher price. See Comments & Supp. Protest at 7-9. As noted above, the RFP stated that the agency would evaluate cost/price proposals for reasonableness considering whether they “exceed that which would be incurred by a prudent person in the conduct of competitive business.” RFP at 25.

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e.g., *Ashland Sales & Serv. Co./Macon Garment Inc., a Joint Venture*, B-400466, Oct. 23, 2008, 2008 CPD ¶ 196 at 3.

Finally, we disagree with the protester's argument that FAR 15.404-1(b)(3) required the Army to explicitly determine that a comparison of proposed prices to each other and the historical prices paid were insufficient methods before comparing Akima's price to the IGE. See Comments & Supp. Protest at 6-7. The protester argues that the record does not demonstrate that the contracting officer viewed both preferred techniques to be insufficient, and that the Army did not explain why it chose not to use historical prices. *Id.* at 7. The agency responds that, when read as a whole, FAR 15.404-1 leaves the choice of price reasonableness analysis techniques to the contracting officer's discretion. COS/MOL at 36.

Under similar factual circumstances, our Office has explained that we will not disturb the discretion of the agency to choose the most suitable price analysis technique. See *Academy Medical, LLC*, B-418223.3, Oct. 7, 2020, 2020 CPD ¶ 324 at 5 (finding an agency's price reasonableness evaluation to be unobjectionable and consistent with FAR 15.404-1(b) where the agency first compared proposed prices, then compared proposed prices to an IGE without comparing proposed prices to historical prices). Further, we agree with the agency that the language of FAR 15.404-1(b)(3) does not conditionally prohibit the use of any particular price analysis technique.²⁰ In short, we

When performing a price reasonableness evaluation, an agency should consider price relative to the particular approach taken by the offeror. *Master Boat Builders, Inc.; Steiner Constr. Co., Inc.*, B-421254 *et al.*, Feb. 8, 2023, 2023 CPD ¶ 56 at 21. Here, even considering the three identified areas of proposed overstaffing, the agency evaluated Akima's proposal as technically advantageous and superior to the other proposals submitted. AR, Tab 115, SSD at 19. Without more, Chugach has not demonstrated that Akima's total proposed price exceeds that which would be incurred by a prudent person in the conduct of competitive business, when considering the corresponding superiority of the evaluated benefits of the services proposed by Akima.

²⁰ In support of its argument, the Army cites to the U.S. Court of Appeals for the Federal Circuit's decision in *DynCorp Int'l, LLC v. United States*, 10 F.4th 1300, 1310 (Fed. Cir. 2021). The protester in *DynCorp*, like Chugach here, argued that an agency's use of anything other than FAR 15.404-1(b)(3)'s preferred price reasonableness techniques--comparison to other offerors' prices or to historical prices--was prohibited unless there was first a determination that competitive or historical price information was unavailable or insufficient. *DynCorp, supra* at 1310. The Federal Circuit disagreed, holding that "FAR 15.404-1(b)(3) does not conditionally prohibit a contracting officer from using any particular price analysis technique." *Id.* The Court interpreted the language of the regulation, explaining that "FAR 15.404-1(b)(2) and (3) are permissive, not prohibitive," pointing specifically to the regulation's use of the words "may" and "preferred" instead of "required" or "shall." *Id.* at 1311-1312. Further, the Court specifically found that FAR 15.404-1(b) does not require the agency to document its determination to use price analysis techniques other than the preferred methods noted in FAR 15.404-1(b)(3).

(continued...)

find nothing unreasonable about the pricing methodology the agency used to assess price reasonableness. While Chugach complains that the Army should have used different price evaluation methods, it has not demonstrated that the agency's price reasonableness evaluation lacked a rational basis. We deny this ground of protest.

Remaining Challenges

Chugach raises additional protest allegations, including additional challenges to the Army's evaluation of Chugach's proposal under the technical approach and cost/price factors and to the best-value tradeoff. See, e.g., Protest at 24-46, 67-95, 98-100. We dismiss these remaining allegations because Chugach, having been found ineligible for award due to its evaluation under the preventative maintenance 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 offeror 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 discussed above, we have found no basis to question the agency's evaluation of Chugach's proposal as unacceptable under the preventative maintenance subfactor or to object to the agency's evaluation of the awardee's proposal. Accordingly, even if we found that Chugach's remaining allegations had merit, Chugach's proposal would still be ineligible for award. We therefore dismiss the remaining allegations.

The protest is denied.

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General Counsel

DynCorp, supra at 1311-1313. The protester has not provided, and our review of the regulation does not reveal, any basis to disagree with the Federal Circuit's interpretation of FAR 15.404-1(b)(3).