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Decision

Matter of: Fusion Technology, LLC

File: B-421560.13; B-421560.15

Date: April 7, 2025

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DIGEST

Protest challenging the agency's price realism evaluation and determination that the protester's price was unrealistic is denied where the evaluation was reasonable and consistent with the terms of the solicitation and applicable law and regulation.

DECISION

Fusion Technology, LLC, of Bridgeport, West Virginia, protests the issuance of a task order to Trilogy Innovations, Inc., of Bridgeport, West Virginia, under request for quotations (RFQ) No. RFQ-09232022, issued by the Department of Justice, Federal Bureau of Investigation (FBI), for digital and information technology services. The protester primarily challenges the agency's price realism evaluation and rejection of its quotation as unrealistic.

We deny the protest.

BACKGROUND

By way of background, this protest follows several rounds of protests and agency voluntary corrective action over the course of this procurement. *See, e.g., ManTech Advanced Sys. Int'l, Inc.*, B-421560.4, Aug. 14, 2023, 2023 CPD ¶ 210; *Fusion Tech., LLC*, B-421560.11, Oct. 7, 2024 (unpublished decision). On

August 23, 2022, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, the agency issued the RFQ to vendors with a General Services Administration, Multiple Award Schedule contract under Special Identification Number 54151S for information technology professional services. According to the RFQ, the agency seeks to acquire agile teams, each comprised of three to eleven individuals, to deliver digital and information technology services for the FBI's Criminal Justice Information Services Division (CJIS). See Agency Report (AR), Tab 3-1, RFQ amend. 13 (RFQ).¹ The RFQ explains that an agile team is a "cross-functional group of individuals who define, build, test, and deliver an increment of value," and that these teams will apply a "Scaled Agile Framework" (SAFe), which is "an enterprise agility framework that helps organizations apply lean and agile principles and practices at all levels of the organization." *Id.* at 4-5.

The RFQ seeks to establish five time-and-materials and fixed-price task orders--collectively called "FBI Agility with SAFe Teams"--one for each of five service areas for the FBI's CJIS. Each task order is identified by a separate contract line item number (CLIN)--this protest concerns the task order issued under CLIN 3, National Crime Information Center, which was set aside for small businesses.² RFQ at 5. The period of performance for each task order includes a base period of one year, including a 3-month transition period and 9-month base period, and four 12-month option periods. *Id.* at 16.

The RFQ provides for award on a best-value tradeoff basis, applying a three-phase advisory down-selection evaluation approach in which vendors were instructed to submit certain volumes of their quotations and the agency would evaluate them in each phase under the following factors: phase one (facility clearance; corporate experience; staffing approach); phase two (SAFe agile methodology demonstration); and phase three (price).³ The RFQ advises that: phase one is more important than phase two; phase two is more important than phase three; and, as the non-price ratings become

¹ The agency has amended the RFQ thirteen times. References to the RFQ are to the final conformed solicitation provided by the agency that is dated April 25, 2024. All citations are to the Adobe PDF page numbers of the documents referenced in this decision.

² The other CLINs are: CLIN 1, law enforcement support services; CLIN 2, biometric services; CLIN 4, shared services; and CLIN 5, operational programs. Two of the CLINs are set aside for small businesses, while the other three CLINs are unrestricted. RFQ at 10-12. Subject to the set-aside conditions, vendors could submit quotations for more than one CLIN. *Id.* at 53. The agency advises that it has cancelled CLIN 4. Contracting Officer's Statement (COS) at 1 n.1.

³ With the exception of the facility clearance factor, which would be rated on a pass/fail basis, each non-price factor would be evaluated and assigned a confidence rating of high confidence, some confidence, or low confidence. RFQ at 66-67. Also, in phase three, vendors were instructed to address organizational conflicts of interest, if applicable, provide a key personnel management list, and address acquisition risk questions. *Id.* at 49.

more similar in nature, the price evaluated in phase three would become more important in the best-value tradeoff decision. *Id.* at 61. The RFQ also explains that, at the conclusion of phases one and two, the agency would provide vendors with a notice that would advise them whether the agency believed they should proceed to the next phase. The RFQ notes that the purpose of the advisory notice was to minimize quotation development costs, and vendors could choose to proceed to the next phase regardless of the recommendation received in the advisory notice. *Id.* at 62-63.

The price factor in phase three is relevant here. For the price factor, the RFQ provides:

The Government will conduct three separate realism evaluations to determine whether the Quoter's low price reflects a lack of understanding of contract requirements or risk inherent in the Quoter's Phase One's technical solution[.] In the realism evaluations described below, each mapped Quoted Rate will be evaluated against the (1) GSA CALC+ [contract awarded labor categories] published rates, (2) historical rates, and (3) IGCE [independent government cost estimate] rates established for each corresponding Government defined LCAT [labor category]. If one or more of the evaluations are deemed unrealistic, the Quoter's Price Volume will be deemed unrealistic.

Id. at 65.

The RFQ provides that, in the first evaluation ("LCAT Pricing Tab"), the agency would "compare[] the Quoted Rates to [the] three government data points"--GSA CALC+ rates, historical rates, and IGCE rates--to assess the realism of rates proposed for each LCAT. *Id.* In the second evaluation ("LCAT Instances"), the RFQ provides for comparison of the number of instances of unrealistic rates to the total number of full-time equivalents (FTEs). *Id.* at 65-66. In the third evaluation ("Team Impact"), the RFQ provides for comparison of the number of teams containing unrealistic LCAT rates to the total number of teams quoted. *Id.* at 66.

The RFQ emphasizes that, throughout the evaluations, the agency would compare the quoted rates to the three data points noted above--GSA CALC+ rates, historical rates, and IGCE rates. Finally, the RFQ provides that, after completing the evaluations, the agency would conduct an "additional review" of the quotation, including the price and technical volumes of the quotation, and determine whether the unrealistic aspects reflected a lack of understanding of the contract requirements or unacceptable risk. *Id.* at 66.

In early 2024, the agency received various quotations, including those from Fusion and Trilogy. The agency evaluated the quotations and selected Trilogy for award on September 6, 2024; thereafter, Fusion filed its first protest with our Office, challenging various aspects of the agency's evaluation and award decision. The agency proposed to take corrective action, to include reevaluating and making a new award decision, and we dismissed that protest as academic. *Fusion Tech., LLC, supra.*

The agency reevaluated the quotations from Fusion and Trilogy⁴ as follows:

	Fusion	Trilogy
Corporate Experience	High Confidence	High Confidence
Staffing Approach	High Confidence	High Confidence
Demonstration	High Confidence	High Confidence
Total Evaluated Price	\$73,618,896	\$93,320,721
Price Complete, Reasonable, and Realistic	No (Unrealistic)	Yes

AR, Tab 9, Basis of Award at 9.

In concluding that Fusion's quoted price was unrealistic, the agency determined that the quotation included "a total of 13 LCATs that were determined to be unrealistic and nine (9) of the 13 LCATs were determined to be uncorrectable (*i.e.*, even with a 0 [percent] discount from the Fully Burdened Rate, Fusion cannot become realistic)." *Id.* at 14; see also AR, Tab 7-1, Price Report at 9-10; AR, Tab 7-2, Price Realism Performance Risk Assessment at 2. For these 13 LCATs, Fusion quoted rates that were lower than at least two of the three data points. See also COS at 11-14. The agency further determined that a total of 25 of the 66 FTEs, and 8 of the 9 teams, would be affected by the unrealistic rates over the period of performance. AR, Tab 7-1, Price Report at 10-11. The agency conducted an additional review of Fusion's quotation and concluded that the risk could not be mitigated. For example, the agency noted that its strategy to mitigate the risks of using junior level LCATs by pairing them with senior level LCATs, is "not a viable option for Fusion if both positions are not able to be staffed or staffed with under-skilled personnel due to unrealistically low pricing." AR, Tab 9, Basis of Award at 14; see also AR, Tab 7-2, Price Realism Performance Risk Assessment at 2 (further noting that "[s]ignificant impact to the CLIN's velocity and capacity would be expected with Fusion's solution"). Based on its overall evaluation, the agency concluded that "Fusion's price quote is unrealistic, reflecting a high-performance risk the Government will not accept." AR, Tab 9, Basis of Award at 14.

The evaluation authority considered the evaluation, compared the quotations, and documented the award decision. The evaluation authority summarized the concerns with Fusion's unrealistic price, highlighting that "[s]ignificant impact to the program's velocity and capacity are expected based on Fusion's staffing solution and its solution is deemed high risk." *Id.* The evaluation authority noted that, while Fusion received ratings of high confidence under three non-price factors and quoted a lower price, "the

⁴ The agency notes that, after numerous protests and corrective actions, Fusion and Trilogy were the only two companies remaining in the competition for the CLIN 3 task order. AR, Tab 9, Basis of Award at 3. The agency also notes that both vendors passed the facility clearance factor, which, as noted above, was evaluated in phase one on a pass/fail basis. *Id.* at 5.

Government is not willing to accept the risks associated with its unrealistically low-price quote and being able to successfully staff the contract.” *Id.* The evaluation authority noted that Trilogy’s quotation also received ratings of high confidence and was “complete, reasonable, and realistic”; in the evaluation authority’s view, “Trilogy’s highly technically rated solution, with its realistic pricing, is worth the price premium.” *Id.*

On December 20, the agency again selected Trilogy for award and notified Fusion of its decision. AR, Tab 10, Unsuccessful Quoter Letter at 1-2. This protest followed.

DISCUSSION

First, Fusion argues that the agency “wrongly concluded [that] Fusion’s LCAT pricing was unrealistically low.” Protest at 6. More specifically, Fusion asserts that it was “irrational” for the agency to have considered whether Fusion’s quotation “clear[ed]” more than one of the three data points--GSA CALC+ rates, historical rates, and IGCE rates--maintaining that the solicitation should have been interpreted as requiring offerors to meet “*only one* of the three.” Comments and Supp. Protest at 2; Supp. Comments at 3. In this context, Fusion acknowledges that it prepared its quotation by “picking one” of the three benchmarks that it believed each quoted rate would “surpass.” Supp. Comments at 2-3. Accordingly, Fusion asserts that the agency’s price realism evaluation reflected application of unstated evaluation criteria.⁵ Comments and Supp. Protest at 4.

As noted above, the RFQ required the agency to conduct three separate realism evaluations to determine whether a vendor’s “low price reflects a lack of understanding of contract requirements or risk inherent in” the vendor’s technical solution. This evaluation would include evaluating a firm’s labor rates against three benchmarks--GSA CALC+ rates, historical rates, and the IGCE. RFQ at 65-66. The agency argues that

⁵ In its various protest submissions, Fusion has raised arguments that are in addition to, or variations of, those specifically discussed below regarding the agency’s price realism analysis. We have considered all of Fusion’s arguments and find that they afford no basis on which to sustain the protest. For example, Fusion also complains that the agency failed to adequately document its price realism analysis. Fusion acknowledges that the contemporaneous evaluation record includes a table showing each rate Fusion quoted, along with the corresponding rates the agency used for each data point, and a calculation of the variance between the quoted rates and the benchmark rates. Supp. Comments at 2; see, e.g., AR, Tab 13, IGCE, GSA CALC+, and Historical Rates Spreadsheet; AR, Tab 14, Quoted Labor Rates and Evaluation Variance Spreadsheet; AR, Tab 15, Unrealistic LCAT Rates, Fusion, Spreadsheet. While an agency’s evaluation judgments in a FAR subpart 8.4 procurement must be documented in sufficient detail to show that they are reasonable, section 8.405-2(f) of the FAR establishes minimum documentation requirements. See, e.g., *Hill Mission Driven Innovative Sols., Inc.*, B-421221.4, B-421221.5, Apr. 25, 2023, 2023 CPD ¶ 105 at 7. On the record here, we reject Fusion’s assertion that the agency’s price realism evaluation was inadequately documented.

the solicitation clearly informed offerors that quoted labor rates would be compared to all three data points; notes that, if the agency had determined that meeting a single benchmark was sufficient, the RFQ would have so stated; and explains that “utilizing one data point would bring more risk to [contract performance].” Supp. COS at 2-3. Further, the agency notes that, in assessing risk, the agency considered the potential impact the unrealistic rates would have on Fusion’s proposal. See AR, Tab 7-1, Price Report at 9-10; AR, Tab 7-2, Price Realism Performance Risk Assessment at 2. In short, the agency maintains that its evaluation was reasonable and consistent with the terms of the solicitation, and it was unreasonable for Fusion to assume that only one of the data points would be considered in the agency’s determination of price realism. Supp. COS at 2-3; Supp. Memorandum of Law (MOL) at 2.

As an initial matter, we note that this competition was conducted under the Federal Supply Schedule procedures of FAR subpart 8.4. The FAR explains that supplies offered on the schedule are listed at fixed prices, and services offered on the schedule are priced either at hourly rates or at a fixed-price for performance of a specific task. FAR 8.404(d). Further, while the procedures of FAR part 15 were not used here, we note that as a general matter, in a fixed-price environment, procuring agencies do not necessarily have to consider price realism when evaluating quotations because fixed-price vehicles place the risk of loss on the contractor rather than on the government. *Patronus Sys., Inc.*, B-418784, B-418784.2, Sept. 3, 2020, 2020 CPD ¶ 291 at 4; *Laboratory Corp. of America*, B-407108, Nov. 5, 2012, 2012 CPD ¶ 313 at 5. However, as here, an agency may include in a solicitation a provision that provides for a price realism evaluation for the purpose of assessing whether an offeror’s low price reflects a lack of understanding of the contract requirements or the risk inherent in a proposal. FAR 15.404-1(d)(3); see also *Patronus Sys., Inc.*, *supra* at 4.

The FAR identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including analysis of pricing information provided by vendors. FAR 15.404-1(b)(2). The nature of the analysis required to assess whether a vendor’s price is so unrealistically low as to reflect a lack of technical competence or understanding is within the agency’s discretion. *AMEC Earth & Envtl., Inc.*, B-404959.2, July 12, 2011, 2011 CPD ¶ 168 at 8. Agencies may use a variety of price evaluation methods to assess realism, including a comparison of prices received to one another, to previously proposed or historically paid prices, or to an independent government estimate. *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 3.

Further, where, as here, a procurement is conducted pursuant to FAR subpart 8.4, our Office will not reevaluate quotations, nor substitute our judgment for that of the agency; rather, we will review the record to ensure that the agency’s evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. See, e.g., *VariQ Corp.*, B-409114 *et al.*, Jan. 27, 2014, 2014 CPD ¶ 58 at 8. A protester’s disagreement with a procuring agency’s evaluation judgments, without more, does not establish that the evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. When a protester alleges an evaluation

utilized unstated evaluation criteria, we will assess whether the solicitation reasonably informs vendors of the basis for the evaluation. *Syneren Techs. Corp.*, B-418541.2, B-418541.3, Sept. 25, 2020, 2020 CPD ¶ 372 at 4. Procuring agencies need not list every aspect of an evaluation factor so long as the agency's evaluation is reasonably related to or encompassed by the stated criteria. *Id.*

Here, Fusion does not meaningfully contest the agency's determination that a significant number of the labor rates Fusion quoted were below two of the three data points that the solicitation repeatedly stated would be used to assess price realism. Rather, Fusion asserts that, so long as each quoted rate "cleared" one of the data points, the agency was required to find that labor rate realistic. Comments and Supp. Protest at 3. The solicitation, however, did not contain any such requirement. As noted above, the solicitation simply stated that each quoted rate would be compared to the three data points--GSA CALC+ rates, historical rates, and IGCE rates--and further, that the agency would rely on those comparisons and conduct additional review to consider the impact on the vendor's quoted solution.

Because the solicitation did not specify whether a labor rate had to exceed one, two, or three of the benchmarks to be considered realistic, it was for the agency to evaluate the risk posed by labor rates that fell below any of the benchmarks identified by the solicitation. As noted above, the nature of the analysis required to assess whether a vendor's price is so unrealistically low as to reflect a lack of technical competence or understanding is within the agency's discretion, and agencies may use a variety of price evaluation methods to assess realism. *AMEC Earth & Envtl., Inc.*, *supra* at 8; *General Dynamics-Ordnance & Tactical Sys.*, *supra* at 3. While Fusion may have preferred an evaluation where a labor rate was deemed realistic so long as it exceeded one of the three benchmarks, it has not provided any basis for our Office to conclude that the agency was unreasonable in finding labor rates below two of the three benchmarks unrealistic. At its core, Fusion's argument amounts to nothing more than disagreement with the agency's judgment. On this record, Fusion's protest is without merit, and this protest ground is denied.

Remaining Protest Grounds

While Fusion also challenges various aspects of the agency's evaluation under the corporate experience factor,⁶ we need not further address them because, even were it to prevail on those grounds, the protester has not established a reasonable possibility of competitive prejudice. Competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance

⁶ Also, Fusion initially raised, and subsequently withdrew, various allegations about the agency's evaluation under the staffing approach factor and potential organizational conflicts of interest. Protest at 10-14; Comments and Supp. Protest at 2 n.2.

of receiving the award. *CSI Aviation, Inc.*, B-415631 *et al.*, Feb. 7, 2018, 2018 CPD ¶ 68 at 7; see, e.g., *Sabreliner Corp.*, B-284240.2, B-284240.6, Mar. 22, 2000, 2000 CPD ¶ 68 at 10 (finding no competitive prejudice from allegations about evaluation of technical strengths where agency reasonably determined that protester's unrealistic price precluded award to the protester).

As noted above, Fusion and Trilogy each received ratings of high confidence under the corporate experience factor. AR, Tab 9, Basis of Award at 9. As also discussed above, we find no basis to object to the agency's evaluation of Fusion's price quotation as unrealistic and its conclusion that it was "not willing to accept the risks associated with [Fusion's] unrealistically low price quotation and the ability [to] successfully staff the contract." MOL at 18, *citing* AR, Tab 9, Basis of Award at 14.

Fusion does not argue that Trilogy should have been eliminated under the corporate experience factor. Indeed, Fusion acknowledges that the success of its corporate experience evaluation challenges is contingent on the agency also changing its price evaluation--that is, Fusion argues that "[h]ad the Agency properly evaluated Trilogy's corporate experience, Fusion would have had a decided advantage under the factor, all but ensuring award to Fusion following a remediated price realism evaluation." Supp. Comments at 2, 9; see *also* Comments and Supp. Protest at 10 n.5 (acknowledging that its quotation was "ineligible for award because of its unrealistic pricing"). Under these circumstances, we need not further address Fusion's challenges to the corporate experience factor because the protester has not established the necessary competitive prejudice. Specifically, any changes to the corporate experience evaluation as alleged by Fusion would not negate the agency's conclusion that Fusion's unrealistic price presented risks that were unacceptable to the agency, rendering the quotation ineligible for award.

The protest is denied.

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General Counsel