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Decision

Matter of: Harper Construction Company, Inc.

File: B-419947.3

Date: March 18, 2026

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Kristopher M. Cronin, Esq., Department of the Navy, for the agency.
Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging technical evaluation is denied where the technical evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Harper Construction Company, Inc., of San Diego, California, protests the issuance of a task order to Clark Construction Group - California LP, of Irvine, California, under request for proposals (RFP) No. N6247325RF016, issued by the Department of the Navy, Naval Facilities Engineering Systems Command (NAVFAC) to repair five housing buildings. The protester contends that the agency's evaluation of the protester's technical proposal as unacceptable was unreasonable.

We deny the protest.

BACKGROUND

On July 1, 2025, under the fair opportunity procedures of Federal Acquisition Regulation subpart 16.5, the Navy issued the solicitation to holders of the agency's indefinite-delivery, indefinite-quantity (IDIQ) multiple award construction contracts. Contracting Officer's Statement (COS) at 401.¹ The agency sought proposals to repair five existing

¹ Citations are to the Bates numbers that the agency assigned to each document.

bachelor enlisted quarters (BEQ) at Marine Corps Base Camp Pendleton, including converting units to new room standards and replacing deteriorated building components and outdated building systems. Agency Report (AR), Exh. 1, RFP, amend. 11 at 160.

The solicitation contemplated issuance of a fixed-price task order with a period of performance of 820 calendar days. *Id.* at 164. The RFP provided for award to be made on a lowest-priced, technically acceptable basis, considering the technical solution evaluation factor and price. RFP, amend. 2 at 117. The technical solution factor would be evaluated on an acceptable or unacceptable basis; offerors deemed unacceptable under the technical solution factor were ineligible for award. *Id.* at 116. Under the terms of the solicitation, the Navy would evaluate the technical proposal from the lowest-priced offeror only. *Id.* at 115. If the lowest-priced offer was found to be unacceptable, the Navy would evaluate the technical proposal of the next lowest-priced offeror. *Id.*

The agency received five proposals by the September 8, deadline. COS at 402. Harper had submitted the lowest-priced proposal with a total evaluated price (TEP) of \$124,958,781. See AR, Exh. 3, Initial Technical Evaluation at 212-13; AR, Exh. 11, Debriefing at 480. In evaluating Harper's technical solution, however, the Navy found the technical proposal to be unacceptable. *Id.* at 476. On September 10, the agency sent an unsuccessful offeror letter to Harper. AR, Exh. 4, Notification of Initial Award at 217. In that letter, the Navy notified Harper that the task order had been issued to Clark for \$68,408,703 "for Base Items 0001-0005," from a TEP of \$136,739,500. *Id.*; AR, Exh. 11, Debriefing at 480.

Harper filed a protest with our Office, challenging the agency's evaluation of the firm's proposal. *Harper Constr. Co., Inc.*, B-419947.2, Nov. 17, 2025 (unpublished decision). In response, the agency advised our Office that it intended to take corrective action; specifically, the agency stated that it would reevaluate Harper's proposal under the technical solution factor. *Id.* We dismissed the protest as academic on November 17. *Id.*

Upon reevaluation, the Navy again found Harper's technical solution to be unacceptable. AR, Exh. 5, Revised Technical Evaluation at 220. Specifically, the agency noted Harper's "proposed conceptual drawings" for unit types in three of the BEQs did "not depict the unit large enough to accommodate all required spaces and meet the minimum NSF [Net Square Footage] as defined by Facilities Criteria for Navy and Marine Corps Unaccompanied Housing." *Id.* On November 26, the agency notified Harper that it had reaffirmed the award to Clark. AR, Exh. 6, Notification of Award at 226. This protest followed.²

² The value of the issued task order exceeds \$35 million; accordingly, this protest is within our jurisdiction to hear protests of task orders placed under defense agency multiple-award contracts. 10 U.S.C. § 3406(f)(1)(B).

DISCUSSION

The protester argues that the agency's evaluation of its technical solution was unreasonable. Harper contends that the agency should have found that the firm's proposal met the minimum technical requirements of the solicitation. Protest at 6. Specifically, the protester alleges NAVFAC's assessment--that Harper's proposed units were not large enough to meet the minimum NSF requirements--is based on an unreasonable interpretation of the solicitation. Comments at 6-7. The agency responds that NAVFAC reasonably evaluated Harper's proposal and disqualified Harper from award for failing to comply with a material requirement of the solicitation. Memorandum of Law at 10-21; Agency Resp. at 3-7. We have reviewed all the protester's allegations and find no basis to sustain the protest.

Solicitation Requirement

It is fundamental that a proposal must conform to the material terms of a solicitation. *Compel JV, LLC*, B-421328, Mar. 8, 2023, at 7. Further, it is an offeror's responsibility to submit a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency, and an offeror risks having its proposal evaluated unfavorably in areas where it fails to do so. *Peraton Inc.*, B-422585 *et al.*, Aug. 16, 2024, at 12. In reviewing protests that challenge an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals but examines the record to determine if the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *QED Sys., LLC*, B-419441.4, Jan. 28, 2022, at 5.

Here, the requirement is to repair five BEQs, including converting the quarters "from existing Room Standards to a new Room Standard." RFP, amend. 2 at 108. The RFP required offerors to submit a three-page design narrative and conceptual drawings for the first floor of each BEQ. *Id.* at 117. The solicitation provided a project description directing offerors to "[c]omply with the current version of FC [Facilities Criteria] 4-721-10N, Navy and Marine Corps Bachelor Housing" for design as well as the RFP's attachment G, a DoD memo titled "Interim Department of Defense Design Standards for Unaccompanied Housing." AR, Exh. 13, RFP attachs. at 353. Those criteria and standards establish, among other things, required spaces (e.g., sleeping area) within rooms and minimum NSF for those spaces. AR, Exh. 7, FC 4-721-10N at 57-58; AR, Exh. 13, RFP attachs. at 1404-07.

The project description further provided the required number and types of rooms for each BEQ. AR, Exh. 13, RFP attachs. at 347-966. For example, for BEQ B53570, offerors were required to submit a plan to convert the existing structure to a minimum of 101 efficiency-type "Standard 2+0 Rooms with Kitchenette."³ *Id.* at 729.

³ In this context, the "2+0" label refers to double-occupancy rooms. See AR, Exh. 7, FC 4-721-10N at 286.

In evaluating Harper's proposal, the Navy's technical evaluation team (TET) concluded that the firm's technical solution was unacceptable because the floor plan for one of the proposed unit types was not large enough "to accommodate all required spaces and meet the minimum NSF" requirements. AR, Exh. 5, Revised Technical Evaluation at 220. Specifically, the evaluators assessed the following:

RFP Part 6, Attachment G: Interim DoD [Department of Defense] Design Standards for Unaccompanied Housing . . . provides the following minimum design standards for an Efficiency-type unit: 180 NSF for the bedroom/living room; 12 NSF for a closet, per resident; 35 NSF for the bathroom; and 40 NSF for the kitchenette. Responses to RFIs [Requests for Information] #1, 2, 161 and 281 clarified that the kitchenette could be reduced to no less than 36 NSF, if it were practically infeasible to accommodate 40 NSF. This results in a minimum NSF requirement of 275 for a two-person occupied Efficiency unit. This was confirmed in response to RFI #281. Further, response to RFI #161 advised that Offerors could combine the sleeping area (i.e. the bedroom) and Service Area square footage to meet the minimum 180 NSF of the living/bedroom (but not the kitchenette – see response to RFI #1 which explained that a kitchenette must be its own dedicated space).

The TET determined the Offeror's Gross Square Footage (GSF) for this unit type to be approximately 282 GSF. This GSF includes the Net Square Footage (NSF) plus floor area for interior walls, interior furring and chases behind interior walls. However, as clarified in RFI #281, the required total combined NSF is 275 NSF. The Offeror's proposed GSF exceeds the required NSF by only 2.5%, which is insufficient to realistically accommodate all required spaces, to include the bedroom, closets, bathroom, kitchenette, interior walls, interior furring and chases behind interior walls. Furthermore, the Offeror has not provided substantiating information demonstrating compliance with the minimum NSF requirements. Given this significant shortfall and the absence of substantiating information demonstrating a feasible solution, the TET concludes that the submission does not meet the required floor plan requirements.

Id. at 222. As a result, the Navy deemed Harper's proposal to be technically unacceptable, and the firm was, therefore, ineligible for award. *Id.* at 220-21.

Harper acknowledges that the relevant unit type proposed by the firm did not meet all minimum NSF requirements identified in the agency's evaluation. See Protest at 17 (identifying and listing measurements). For instance, the protester recognized that the solicitation--as amended by the responses to the RFIs--invoke a minimum of 36 NSF for kitchenettes, and according to Harper, the firm's proposed kitchenettes are, at most, 22.3 NSF. *Id.* Yet Harper contends the agency still was not permitted to assess the firm's proposal as being technically unacceptable.

First, Harper reasons that the solicitation did not allow the Navy to evaluate the submitted conceptual drawings for technical acceptability because, according to the protester, the drawings are “**conceptual** only” and will require further development during design and development reviews. Protest at 18. This argument, however, cannot be squared with the plain language of the solicitation. Although the solicitation did provide that conceptual drawings and technical solutions would undergo additional review after award, the RFP was clear that the conceptual drawings should demonstrate compliance with the design requirements and specified that they would be used for “technical evaluation purposes.” RFP, amend. 2, at 12. Here, the solicitation specifically provided for evaluation of conceptual drawings against the design requirements. The fact that the designs would be developed further does not negate the agency’s ability to rely on those conceptual drawings to evaluate the acceptability of Harper’s proposal. As such, we find no merit to this argument. See *Anwar Al-Anduols*, B-401550, B-401550.3, Sept. 22, 2009, at 3 (rejecting protest challenging evaluation of “conceptual layout” as unacceptable where proposed layout failed to include utility connections as required by RFP).

Second, Harper contends that it was allowed to deviate from the minimum NSF for the kitchenettes by the terms of the solicitation. Harper Resp. at 5. According to the protester, “the Solicitation does not establish minimum NSF requirement . . . because of offerors’ right to deviate from new construction requirements pursuant to FC 4-721-10N, Chapter 3-3.2.” *Id.* The protester, however, acknowledges that attachment G to the RFP (Interim DoD Design Standards for Unaccompanied Housing) identifies a 40 NSF minimum for kitchenettes. *Id.* at 5. Harper further acknowledges that, as part of the solicitation process, the agency issued responses to questions raised by potential offerors in the form of RFIs, and that the RFIs and the responses were incorporated in the solicitation by amendment. RFP, amend. 11 at 165-203. Relevant here, RFI No. 281 addressed an offeror’s concern that room specifications were too small for a 40 NSF kitchenette. *Id.* at 202. In response, the Navy reduced the minimum requirement to 36 NSF, provided that all functionality was maintained. *Id.* (identifying “36-40 NSF (min.)” as the “minimum area requirement” for the kitchenette); see also *id.* at 187 (stating that among the “minimum spatial standards [that] shall be used as a guide” was “Kitchenette: 36-40 NSF (minimum, 36 NSF acceptable if fully functional)”).

According to Harper, this kitchenette minimum--even reduced to 36--represents “**new construction evaluation criteria.**” Comments at 3. The protester argues that, because the BEQs are “**existing older facilities,**” the solicitation allowed offerors to deviate from the NSF specifications, as they deemed appropriate. *Id.* at 3. Harper invokes Chapter 3-3.2 of FC 4-721-10N, which states that renovation projects “will be executed to the maximum extent possible to include new construction requirements noting that a 2+0 standard (assignment) may not be achieved within existing older facilities.” AR, Exh. 7, FC 4-721-10N at 30. In the protester’s view, to the extent that this discretion to reduce the kitchenette NSF size was limited, any reduction to an NSF above 12.84 was acceptable based on a conceptual drawing of a similar unit featured within FC 4-721-10N. Comments at 4 (referencing Figure B-7 in FC 4-721-10N). In

other words, the protester argues that—at most—the solicitation only allowed the Navy to deem a kitchenette unacceptable if the proposed design was below 12.84 NSF. Because Harper’s proposed kitchenettes were 22.3 NSF in size, the agency should have deemed them acceptable. *Id.*

The Navy asserts that, when read as a whole, the solicitation established 36 as the minimum NSF for the kitchenettes. COS at 408. The Navy references the solicitation’s numerous RFIs (e.g., 1, 2, 161, and 281) that “clarified that the kitchenette could be reduced to no less than 36 NSF, if it were practically infeasible to accommodate 40 NSF.” *Id.* According to the agency, the response to RFI No. 281 clearly stated that 36-40 was the minimum NSF for kitchenettes and that the “use of FC 4-721-10N Chapter 3-3.2 is permitted only for minor dimensional adjustments—not wholesale deviation. Proposals relying on significant reductions will risk being deemed non-compliant.” *Id.* at 411 (quoting RFP, amend. 11 at 202).

The protester claims that the agency’s position is “inconsistent” with other parts of the solicitation, including the drawing for a similar BEQ unit, depicted as Figure B-7 in the FC 4-721-10N. Comments at 6 n.3. Harper further asserts that the RFI responses that support the agency’s position are contradicted by “the plain language” of other parts of the solicitation. *Id.* at 6. Essentially, Harper states that the deviations allowed by Chapter 3-3.2 of FC 4-721-10N cannot be reconciled with the RFP’s limits to “minor dimensional adjustments” or a 36 NSF minimum. *Id.* at 3-7.

The protester’s position, in this respect, demonstrates that Harper can only succeed in its argument that there is an ambiguity, or conflict, between the terms of the solicitation. Essentially, Harper is arguing the solicitation was in conflict because the RFQ, simultaneously, stated that (1) offerors could deviate from the NSF for the kitchenette without limit (or at most, to a limit of 12.84 NSF), and (2) that 36 NSF for a kitchenette was the minimum for proposals to be found technical acceptable.

As our decisions have explained, an ambiguity exists when two or more reasonable interpretations of the solicitation are possible. *Colt Defense, LLC*, B-406696, July 24, 2012, at 8. If the ambiguity is an obvious, gross, or glaring error in the solicitation (for example, where solicitation provisions appear inconsistent on their face), then it is a patent ambiguity; a latent ambiguity is more subtle. *Trailboss Enters., Inc.*, B-419209, Dec. 23, 2020, at 7. A patent ambiguity, however, must be protested prior to the closing time for the submission of responses to the solicitation, in order to be considered timely. 4 C.F.R. § 21.2(a)(1); *Megatech Corp.*, B-417582, June 25, 2019, at 3. That is, an offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the due date for proposal submission. *Sterling Med. Assocs., Inc.*, B-419794, June 25, 2021, at 4. When a patent ambiguity in a solicitation is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the solicitation term. 4 C.F.R. § 21.2(a)(1).

Even assuming, *arguendo*, that the solicitation’s repeated statement that 36 was the minimum NSF for a kitchenette created a conflict with Chapter 3-3.2 of FC 4-721-10N,

that conflict was apparent or obvious on its face. Indeed, the agency specifically addressed Chapter 3-3.2 of FC 4-721-10N in the responses to RFIs, reiterating the minimums measurements, and clarified that FC 4-721-10N could not be relied on for anything beyond “minor dimensional adjustments.” RFP, amend. 11 at 202. Ultimately, the protester’s arguments are a challenge to the solicitation’s minimum requirements based on an alleged patent ambiguity. Therefore, this post-award challenge is untimely. 4 C.F.R. § 21.2(a)(1); *NOVA Corp.*, B-408046, B-408046.2, June 4, 2013, at 8 (finding untimely protester’s technical evaluation challenge where it was contrary to the clear terms of the solicitation and, at best, identified a patent ambiguity). Because the protester’s challenge to the kitchenette minimum NSF requirement is untimely, we have no basis to find that the agency’s rejection of Harper’s proposal based on that minimum was unreasonable.

Remaining Allegations

Separately, the protester argues that the agency relied on “an unstated and implicit design requirement” to demolish walls and combine rooms and an unstated NSF to GSF ratio during the evaluation, and that the Navy also miscalculated the overall NSF for Harper’s proposed units. Comments at 7-12; Harper Resp. at 2-5. We need not resolve these allegations, because Harper has suffered no competitive prejudice.

Competitive prejudice is an essential element of every viable protest. *Computer Cite*, B-400830, Feb. 3, 2009, at 3. We will not sustain a protest where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency’s actions. *Panther Brands, LLC*, B-409073, Jan. 17, 2014, at 7-8. Because Harper’s proposal did not meet the minimum NSF for kitchenettes for all units, the proposal was reasonably found technically unacceptable and therefore ineligible for award. Any asserted evaluation error regarding requiring demolition or calculating overall NSF presents no reasonable possibility of prejudice because Harper’s proposal remains ineligible for award. *Geotech Env’t. Servs., Inc.*, B-415035, Nov. 8, 2017, at 5.

The protest is denied.

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General Counsel