



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

# Decision

**Matter of:** TRAX International Corporation

**File:** B-410441.14

**Date:** April 12, 2018

---

Amy Laderberg O’Sullivan, Esq., James G. Peyster, Esq., Olivia L. Lynch, Esq., and Robert J. Sneckenberg, Esq., Crowell & Moring LLP, for the protester. Evan C. Williams, Esq., and Scott N. Flesch, Esq., Department of the Army, for the agency. Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protest alleging that the solicitation is ambiguous or otherwise defective with respect to anticipated overtime hours is denied where the protester’s interpretation of the solicitation is not reasonably supported and its allegations are otherwise premature as they merely anticipate that the agency will evaluate proposals unreasonably.

---

## DECISION

TRAX International Corporation, of Las Vegas, Nevada, protests the terms of request for proposals (RFP) No. W9124R-13-R-0001, which was issued by the Department of the Army, for mission test support services at the United States Army Yuma Proving Ground in Arizona. TRAX primarily alleges that the amendments to the RFP issued as part of the agency’s corrective action taken in response to multiple rounds of protest before our Office and the United States Court of Federal Claims are ambiguous, vague, and fail to provide a reasonable basis for offerors to intelligently prepare their respective proposals or for the agency to evaluate them on a common basis.

We deny the protest.

## BACKGROUND<sup>1</sup>

On May 16, 2013, the Army issued the RFP for a cost-plus-award-fee contract, with fixed-price and cost-reimbursable line items, for a base year and three 1-year options. RFP at 6-13. The awardee's primary responsibilities under the resulting contract will be to provide specialized personnel and support for military testing at the Yuma Proving Ground. The RFP's Performance Work Statement (PWS) included several technical exhibits (TE).

Relevant to the issues in this protest are two components of TE-10, "Index Workload History." First, TE-10, Item 6, "Current Manning Level," provides historical staffing information. The exhibit shows 1,234 historical staff under a column titled "Count of Job Title," which represents the number of full-time equivalents (FTE) needed for the initial period of performance of the contract. A single FTE represents the annual productive hours required by a single person for one year, minus non-productive hours, and was based on 2,080 hours per year, constituting 40 hours multiplied by 52 weeks. As will be discussed, offerors are to use the information in TE-10, Item 6, as the initial basis for their respective staffing approaches. Second, TE-10, Item 7, "Listing of all Labor Categories ([Service Contract Act] and professional, [excluding] Management) with Current Average Wage Rates by Labor Category, Current [Annual Wage Determination] Rate, Productive and Overtime Hours Worked and FTEs," provides historical data regarding wage rates, total regular hours, and total overtime hours by job title for informational purposes.

As noted above, the agency has consistently conveyed to offerors during the procurement that the staffing information in TE-10, Item 6 was to be used as the basis for the offerors' respective staffing plans. In its current formulation, the RFP provides two separate instructions to offerors regarding the requirement to use the staffing information in TE-10, Item 6. First, with respect to offerors' respective staffing plans under the management and organization subfactor, the RFP directs that:

The Offeror shall provide a staffing matrix for first line supervisors and subordinate employees for each functional area. The matrix shall depict the number of [FTEs], productive hours by labor category, skill level, and skill type of employment for each functional area, identifying PWS paragraph sections, inclusive of sub-functions. The Government is providing manning levels by labor category in [TE-10, Item 6]. The staffing information in TE-10, Item 6 by PWS and labor category is requested to

---

<sup>1</sup> As the prior decisions of the Court of Federal Claims and this Office provide relevant background regarding the procurement and the prior protests relating thereto, our discussion herein is limited to the issues relevant to the resolution of the specific allegations of this protest. See, e.g., Jacobs Tech. Inc. v. United States, 131 Fed. Cl. 430 (2017); TRAX Int'l Corp.--Costs, B-410441.8, Aug. 17, 2016, 2016 CPD ¶ 226; TRAX Int'l Corp.--Costs, B-410441.5, Aug. 26, 2015, 2015 CPD ¶ 276.

be used as a baseline (excluding management and administrative staff). Deviations from this baseline based on the offeror's unique management approach and promised efficiencies shall be fully explained and justified, keeping in mind that the Government is interested in a management approach that will result in continuous improvements and efficiencies that are expected to be reflected in the Mission Capability and Cost proposals.

RFP, amend. No. 0011, at 10.

Additionally, the RFP's instructions with respect to the preparation of offerors' respective cost proposals provides as follows:

The staffing information in TE-10, Item 6 by PWS and labor category is requested to be used as a baseline (excluding management and administrative staff) for developing proposed labor costs. Deviations from this baseline based on the offeror's unique management approach and promised efficiencies, shall be fully explained and justified, in the Cost Rationale Section, keeping in mind that the Government is interested in a management approach that will result in continuous improvements and efficiencies that are expected to be reflected in the management and cost proposals.

Id.

Notwithstanding the Army's instructions regarding using TE-10, Item 6 as the basis for offerors' staffing approaches, both the interpretation and application of the RFP's applicable provisions have proven problematic. See, e.g., TRAX Int'l Corp.--Costs, 2016 CPD ¶ 226 at 2-3, 4 (discussing the agency's corrective action taken following GAO's outcome prediction alternative dispute resolution recommendation regarding the agency's evaluation of offerors' proposed labor hour baselines); RFP, amend. No. 0009 (withdrawing amendment Nos. 0007 and 0008, which included provisions clarifying the labor hour baseline). This protest presents a new chapter in the RFP's problematic history based on the agency's subsequent efforts to clarify the common labor hour baseline.

Specifically, TRAX posed a series of questions to the agency regarding whether overtime was considered to be included in the initial labor baseline of 2,566,720 hours based on 1,234 FTEs; the protester's questions and the agency's answers (hereinafter, "Q&A") were incorporated in the RFP via several amendments.<sup>2</sup> For example, in the Q&A incorporated as amendment No. 12, TRAX raised concerns that TE-10, Item 7, which included overtime, appeared to conflict with the baseline figures in TE-10, Item 6. The protester also sought clarification regarding the percentage of overtime hours

---

<sup>2</sup> The Q&As do not identify who posed the questions, but TRAX has represented that it posed the relevant questions. See, e.g., Protest at 12-16.

included in the RFP's labor hour baseline. The Army explained that there was no ambiguity in the solicitation, as the common baseline was predicated on TE-10, Item 6's total labor hour target, and, while the baseline was calculated using FTEs, the relevant information for the baseline was the total number of hours, not the specific number of FTEs. Specifically, the relevant portions of the parties' exchanges were as follows:

Question: TE-10, Item 7 shows overtime hours included within the baseline creates a patent ambiguity or an inconsistency in the RFP, as the "baseline" is identified in the current RFP as TE-10, Item 6. Please confirm whether or not the TE-10, Item 6 includes overtime within the baseline of 1,234 FTEs at 2,080 annual hours per FTE.

Response: There is no patent ambiguity or inconsistency in the RFP. In accordance with the Solicitation, TE-10, Item 6 shows the common starting baseline of 1,234 FTEs, excluding management and administrative staff. Offeror proposals should demonstrate compliance with the common starting baseline of 1,234 FTEs (i.e., 1,234 FTEs x 2080 gross hours/FTE which equates to 2,566,720 hours). TE-10, Item 7, provided as workload history, shows a historical application of overtime within the baseline of 1,234 FTEs.

Question: Please identify the percentage of overtime hours included within the RFP baseline.

Response: The percentage of overtime hours included within the RFP baseline is not directed by the Government. Use and amount of overtime hours is a discretionary staffing decision [ ] made by the Offeror's management and it[s] approach to the workload.

\* \* \* \* \*

Question: Does the TE-10, Item 6 baseline of 1,234 FTEs (2,566,720 hours) include overtime?

Response: Yes.

RFP, amend. No. 0012, Q&A, at 3, 4.

In the subsequent Q&A incorporated by amendment No. 0013, TRAX questioned the propriety of requiring the inclusion of overtime in the initial labor hour baseline, or, alternatively, asserted that the agency was required to identify the allocation of anticipated regular and overtime hours. The Army explained that overtime hours were not required to be included in the initial labor hour baseline of 2,566,720 hours, but, rather, could be proposed as part of the baseline hours based on offerors' unique proposed staffing approaches. The exchange, in relevant part, was as follows:

Question: By confirming in Amendment 0012 that the TE-10, Item 6 baseline of 1,234 FTEs at 2,080 annual hours (which is 52 weeks at 40 hours per week) includes overtime, the Agency is now instructing offerors to rely on baseline staffing in which offerors (and the Agency) would calculate much higher overtime rates in situations not required by the [Fair Labor Standards Act (FLSA)] or the applicable collective bargaining agreement . . . and which would result in an unrealistic approach to utilization of overtime. . . . To avoid passing on these unnecessary overtime rates/costs to the Agency and creating significant uncertainty/inconsistency regarding when overtime is required, the TE-10, Item 6 baseline of 1,234 FTEs at 2,080 hours per FTE (as clarified by Amendment 0012) should be revised and specifically defined as NOT including overtime for the 2,080 hours. Additionally, overtime hours – which must be part of the TE-10, Item 6 baseline as a required component of contract performance – will need to be identified and provided to all offerors for each of the 1,234 FTE positions in TE-10, Item 6. Without this information, there will not be a level playing field.

Response: The question is premised on a misstatement of the content of Amendment 12. Amendment 12 does not state “. . . the TE-10, Item 6 baseline of 1,234 FTEs at 2,080 hours per FTE is 52 hours a week at 40 hours per week”. Amendment 12, question 11 and Government response states: “Does the TE-10, Item 6 baseline of 1,234 FTEs (2,566,720 hours) include overtime? Response: Yes.” To clarify, TE-10, Item 6 does not state that the common staffing baseline of 1,234 FTEs “must” contain overtime hours. TE-10, Item 6 indicates the common starting baseline is 1,234 total FTEs, excluding management and administrative staff. An offeror’s management approach to a given task can utilize all full time employees or a combination of part time and full time employees. The number of hours worked by an employee and the requirements of the FLSA determine if the employee is entitled to payment of an overtime rate for some of the hours worked. Scheduling employees work hours is an employer management [decision] based on its independent judgment of the number of hours needed to support a specific task. TE-10, Item 6 refers to total FTEs, not the number of employees and the hours worked by each.

RFP, amend. No. 0013, at 2.

This exchange continued into another round of Q&As. TRAX again argued that the agency was required to disclose the allocation of regular and overtime hours expected to be included in the common labor hour baseline. The Army again explained that whether overtime hours were to be included in the common labor hour baseline would be dictated by the offeror’s unique proposed staffing approach, and sought to further clarify the relationship between TE-10, Items 6 and 7. Specifically, the Army explained:

The Solicitation requires offerors to use the staffing in TE-10, Item 6 by PWS and labor category as a common baseline starting point. TE-10, Item 6 is only intended to provide offerors with starting baseline staffing information by job title, excluding management and administrative staff, of 1,234 FTEs based on a total of 2,080 annual hours per FTE (2,566,720 total annual hours). TE-10, Item 6 provides all of the information needed to establish a common baseline of 1,234 FTEs (total) as a starting point.

TE-10, Item 7 provides the historical data regarding wage rates, total regular hours and total overtime hours by job title for informational purposes. The RFP does not state that the TE-10, Item 7 is to be used as a common starting baseline. The number of full-time hours and/or part-time hours, as well as the decision to schedule staff in a manner that entitles payment at a regular hourly rate or overtime hour rate, is an offeror's decision based on its proposed unique management approach.

RFP, amend. No. 0014, at 2.

This timely pre-award protest to our Office followed.

## DECISION

Consistent with its multiple rounds of questions, TRAX primarily alleges that the RFP is ambiguous or otherwise defective for requiring the inclusion of overtime hours in the common established labor hour baseline, which is calculated based on 1,234 FTEs. The protester alternatively argues that if overtime is to be included in the common starting labor hour baseline of 2,566,720 hours, the Army must disclose to offerors the anticipated allocation of regular and overtime hours. The Army counters that TRAX's interpretation regarding the requirement to include overtime hours in the common labor hour baseline is inconsistent with the plain terms of the RFP, as clarified by the Q&As incorporated by amendment. In this regard, the agency submits that offerors must propose to a common starting labor hour baseline of 2,566,720 hours, but are otherwise free to propose any combination of staffing to meet that baseline.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. Shertech Pharmacy Piedmont, LLC, B-413945, Nov. 7, 2016, 2016 CPD ¶ 325 at 3. Here, we find that TRAX's assertion that overtime hours are required to be included in the labor hour baseline is not reasonably supported by the terms of the solicitation.

At their core, TRAX's objections are predicated on its interpretation that the RFP requires offerors to include overtime hours as part of the common labor hour baseline. This interpretation, however, is not reasonably supported by the RFP. It is readily apparent that the Army's intent is to provide a common starting labor hour baseline of 2,566,720 gross labor hours. The agency established that common starting baseline based on 1,234 FTEs. The Army, however, has clearly conveyed that an offeror is not bound to use 1,234 FTEs, so long as it proposes an initial baseline of 2,566,720 gross labor hours. See RFP, amend. No. 0013, at 2 ("An offeror's management approach to a given task can utilize all full time employees or a combination of part time and full time employees. . . . TE-10, Item 6 refers to total FTEs, not the number of employees and the hours worked by each.").

As a rudimentary example under the agency's revised guidance, an offeror could propose 5 FTEs working a standard 40-hour workweek, for a total of 200 hours. Alternatively, an offeror could propose 4 FTEs working a standard 40-hour workweek and 10 additional hours of overtime each, for a total workweek of 50 hours. In both scenarios, the offerors are proposing to the same 200 hour baseline, but one offeror is proposing to use a standard workweek, while the other is proposing to utilize a standard workweek plus overtime hours. We fail to see how this scenario would preclude offerors from competing on a common basis in terms of the anticipated baseline number of labor hours, or the agency evaluating their respective proposed approaches on a common basis.

Of course, merely because an offeror could propose to rely on overtime hours to meet the core baseline hours does not mean that such an approach will, or necessarily should, be found to be realistic. The agency will have to conduct and document an adequate cost realism evaluation, as well as consider both the technical feasibility and appropriateness under the applicable mission suitability evaluation criteria.<sup>3</sup> Significant portions of TRAX's protest and comments focus on the parties' previous proposed staffing approaches, and then speculates on how the offerors may propose in their subsequent proposals. In this regard, we conclude that the protester's arguments here concerning the agency's corrective action merely anticipate adverse actions by the agency, and are thus premature. Our Office assumes that agencies will conduct procurements in a fair and reasonable manner in accordance with the terms of the solicitation, and we will not consider a protest allegation which speculates that an

---

<sup>3</sup> In addition to the applicable criterion under the management and organization subfactor, an offeror's proposed staffing approach ostensibly will also be relevant to the agency's evaluation under the personnel management approach subfactor. Under that subfactor, the Army is to assess, among other considerations, an offeror's ability to "provide sufficient manpower and quickly recruit and retain the requisite skill sets," as well as to "manage a multi-functional, multi-skilled workforce, supporting multiple remote test centers, fluctuating staff levels, and utilizing a cross-training strategy to optimize the test mission while ensuring that the cost of testing to customers remains competitive." RFP, amend. No. 0006, at 24.

agency will not evaluate proposals in the manner set forth in the solicitation. Booz Allen Hamilton, Inc., B-414822.5, Oct. 13, 2017, 2017 CPD ¶ 315 at 4.

As the Court of Federal Claims cogently observed, this procurement “has spanned years and has proved to be refractory and intricate.” Jacobs, 131 Fed. Cl. at 435. We anticipate that whichever party is disappointed by the agency’s subsequent evaluation will likely file a post-award protest. The reasonableness and adequacy of the agency’s evaluation, however, are properly questions reserved for that time.

The protest is denied.

Thomas H. Armstrong  
General Counsel