



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Tribalco, LLC

File: B-414120; B-414120.2

Date: February 21, 2017

Philip J. Davis, Esq., Kara M. Sacilotto, Esq., Christopher M. Mills, Esq., and Cara M. Lasley, Esq., Wiley Rein LLP, for the protester.

J. Alex Ward, Esq., and Ethan E. Marsh, Esq., Morrison & Foerster LLP, for IAP Worldwide Services, Inc., an intervenor

Wade L. Brown, Esq., and Erica A. Harder Smith, Esq., Department of the Army, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated the protester's integrated master schedule (IMS) is denied where the record reflects the agency's evaluation findings were reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest that agency's evaluation of the awardee's IMS was unreasonable and demonstrated disparate treatment is sustained where the record does not support the agency's findings that the awardee's IMS met the solicitation's evaluation criteria--as applied by the agency in its evaluation of the protester's IMS--and reflects that the agency identified certain omissions in the protester's IMS, but overlooked similar omissions in the awardee's IMS.
-

DECISION

Tribalco, LLC, of Bethesda, Maryland, protests the issuance of a delivery order to IAP Worldwide Services, Inc., of Cape Canaveral, Florida, by the Department of the Army, Army Contracting Command, under request for delivery order proposals (RFDOP) No. W52P1J-16-R-SCC1 for strategic command center infrastructure upgrades. Tribalco alleges that the agency's evaluation of both its and IAP's proposals was flawed in various respects.

We sustain the protest in part and deny it in part.

BACKGROUND

On June 23, 2016, the agency issued the solicitation using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5 to firms holding contracts under the agency's Communications and Transmission Systems multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contract vehicle. RFDOP at 1-2. The solicitation contemplated the issuance of a fixed-price delivery order (with several limited cost-type contract line item numbers) with a one-year base period and six one-year options.¹ Id. at 2-3. The solicitation included a lengthy performance work statement (PWS) establishing requirements for "an infrastructure modernization effort that consists of upgrading the current [telecommunications room] equipment, power and grounding, and Heating, Ventilating, and Air Conditioning (HVAC) to meet the requirements for deploying equipment within . . . command center buildings." PWS at 1.

The solicitation provided that the agency would issue the delivery order to the lowest-priced, technically acceptable proposal. RFDOP at 18. Technical acceptability was to be evaluated under a single factor, technical approach, which included three subfactors: engineering implementation plan, integrated master schedule (IMS), and project management plan. Id.

The solicitation provided that the agency would evaluate technical acceptability based on whether an offeror's proposal provided a "comprehensive and complete technical approach that adequately and completely addresses the requirement to develop a solution and relevant schedule with a sufficient level of detail documented to address all of the requirements and work activities." RFDOP at 19. In addition, and as relevant here, the solicitation established that under the IMS subfactor, the agency would evaluate technical acceptability on the basis of whether an offeror's IMS was "complete" and "comprehensive" with regard to "all elements" of two projects described in the PWS--telecommunications room remediation and "joint mall" modernization. Id. at 21. Also under the IMS subfactor, the solicitation established six "elements" under which technical acceptability would be evaluated. Id. at 21-22. These elements included whether the offeror's IMS "include[d] all activities, to include mobilization and deployment of personnel, deliverables and delivery schedules, and milestones for the entire performance period"; whether the IMS "account[ed] for all deliverable submission dates, all [government] reviews and approvals, and re-submissions as provided in the requirements in the PWS"; and whether the IMS included "[a]ll events that the Offeror will perform from contract award to project closeout." Id. at 21-22

¹ It is not clear why the agency designated the contractual instrument a delivery order, rather than a task order, since the solicitation primarily sought services, rather than supplies. See FAR § 2.101 (defining a delivery order as an order for supplies and a task order as an order for services).

As also relevant, the IMS subfactor evaluation criteria provided that the agency would evaluate whether the IMS presented events in the proper sequence relative to the PWS. In this regard, the solicitation stated an offeror's IMS would be evaluated for "consisten[cy] with the milestones and requirements in the PWS" as well as whether it reflected a "critical logical path that demonstrate[s] events that are dependent upon other events in the baseline schedule [are] in the proper sequence in the implementation timeline." RFDOP at 21.

The agency received two proposals by the solicitation's closing date--one from Tribalco and one from IAP. Agency Report (AR), Tab 45, Source Selection Decision Document (SSDD), at 2. A technical evaluation team (TET) evaluated the proposals under the three technical approach subfactors. IAP's proposal was found technically acceptable under all three subfactors. *Id.* at 4. Tribalco's proposal was found acceptable under the engineering implementation plan and project management plan subfactors, but unacceptable under the IMS subfactor. *Id.* at 5. The basis for the unacceptability determination was the TET's finding that Tribalco's IMS lacked adequate detail and failed to include a number of requirements and deliverables. AR, Tab 44, Tribalco Technical Evaluation Rep., at 5-8.

IAP's total proposed (and evaluated) price was \$168,901,586. AR, Tab 42, IAP Price Proposal, at 1; AR, Tab 45, SSDD, at 6. Tribalco's total proposed price was \$95,349,506, approximately \$73 million less than IAP's price.² AR, Tab 33, Tribalco Price Proposal, at 1. However, since IAP's proposal was deemed technically acceptable and Tribalco's was not, the agency selected IAP for the delivery order. SSDD at 7-8. Following a debriefing, Tribalco filed a protest with our Office.³

DISCUSSION

Tribalco challenges the agency's determination that its proposal was technically unacceptable under the IMS subfactor, as well as the agency's determination that IAP's proposal was technically acceptable under the IMS subfactor. As discussed

² Tribalco's proposed price was not evaluated since the firm's proposal was found technically unacceptable, but the solicitation established that an offeror's total proposed price was the same as its total evaluated price. See AR, Tab 15, RFDOP Pricing Model, at 1.

³ Since the value of the delivery order exceeds \$25 million, this procurement meets both the prior and current jurisdictional thresholds of \$10 million and \$25 million, respectively, for our Office to hear protests related to the issuance of orders under multiple-award, ID/IQ contracts awarded pursuant to Title 10 of the United States Code. 10 U.S.C. § 2304(e)(1)(B); National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000, § 835 (amending jurisdictional threshold to \$25 million, effective December 23, 2016).

below, we find that the record supports the agency's evaluation of Tribalco's IMS, and we therefore deny this ground of protest. However, we find that the record shows the agency's evaluation of IAP's IMS was flawed, and we therefore sustain this ground of protest.⁴

The Evaluation of Tribalco's IMS

As stated above, the TET rated Tribalco's IMS unacceptable based on findings that it lacked adequate detail and failed to include a number of requirements and deliverables. Tribalco challenges this assessment, first arguing that the TET's findings reflect the imposition of requirements beyond those set forth in the solicitation. Protest at 1, 8-10; Comments at 2-3. In support of this, Tribalco contends that because only one of the six elements in the IMS subfactor evaluation criteria included the phrase "at a minimum," only the requirements of that element need have been met in order for an IMS to be technically acceptable. Protest at 8-10; Comments at 2-3.

Before addressing Tribalco's contention, we observe that in reviewing protests of an agency's evaluation, including those in procurements conducted pursuant to FAR subpart 16.5, such as the one here, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation was reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement laws and regulations. See Sci. Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 5; NCI Info. Sys. Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 7.

Here, Tribalco argues that its IMS need have addressed only one of the six elements in the IMS subfactor evaluation criteria to have been determined technically acceptable. The agency counters that this position is "illogical and wrong" because each of the other five IMS evaluation criteria elements established numerous items to be included in the IMS. Combined Contracting Officer's Statement and Legal Memorandum (CCOSLM) at 12. To illustrate, the agency discusses the IMS subfactor evaluation criteria as follows:

[Element 1] informs offerors that, "proposal[s] will be evaluated on the acceptability of the entire project schedule . . . **with all key milestones highlighted.**" [Element 2] states, "proposal[s] will be evaluated on the acceptability of the project schedule to include **all**

⁴ We note that Tribalco has raised other allegations, including allegations regarding the agency's evaluation of IAP's pricing and a single instance where IAP did not redact its company name from a diagram in its technical proposal. Based on our review of the record, we find that none of these allegations furnishes a basis on which to sustain the protest.

activities, to include mobilization and deployment of personnel, deliverables and delivery schedules, and milestones for the entire performance period” [Element 3] requires, “the project schedule to **account for all deliverable submission dates, all [government] reviews and approvals**, and re-submissions as provided in the requirements in the PWS, and appendices and exhibits.”

CCOSLM at 12, (quoting RFDOP at 21) (emphasis supplied by the agency) (internal citations omitted). In other words, the agency takes the position that the solicitation required an offeror’s IMS to comprehensively cover the PWS requirements and the contractor’s “activities.” We find the agency’s position reasonable.

Where, as here, a dispute exists as to the actual meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17; Logistics Mgmt. Int’l, Inc., et al., B-411015.4 et al., Nov. 20, 2015, 2015 CPD ¶ 356 at 13. Each of the elements in the IMS subfactor evaluation criteria began with the phrase “the Offeror’s proposal will be evaluated on the acceptability of the [IMS] to” RFDOP at 21-22. Following this phrase, each element described specific IMS attributes that the agency will evaluate. Id. Accordingly, we see no merit in Tribalco’s claim that offerors essentially could ignore five of the six IMS elements and expect their proposals to be deemed technically acceptable.

Next, Tribalco challenges the agency’s evaluation of its IMS on the basis that the TET should have reviewed the engineering implementation plan and project management plan volumes of its proposal to find details that were missing from its IMS. Protest at 10-14; Comments at 4-5. We disagree.

The solicitation directed offerors to submit the IMS as a “separately packaged sub-volume[.]” RFDOP at 8. The instructions for this sub-volume began with the statement that offerors “shall submit a comprehensive IMS.” Id. at 14. The instructions then detailed, at length, the information that the IMS sub-volume was to contain. Id. at 14-15. The solicitation imposed no page limit on the IMS sub-volume. Id. at 9.

An offeror bears the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably where it fails to do so. See Tetra Tech Tesoro, Inc., B-403797, Dec. 14, 2010, 2011 CPD ¶ 7 at 5; Int’l Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Given the solicitation’s explicit instructions regarding what information the IMS sub-volume was to contain--as well as the instruction that the IMS sub-volume was to be “comprehensive”--we see no merit in Tribalco’s argument that the agency should have looked to other volumes of the firm’s proposal to attempt to identify the missing information.

Finally, Tribalco challenges the evaluation of its IMS on the basis that the agency should have allowed the firm to “correct or clarify” what it characterizes as a “minor clerical mistake” with its IMS. Protest at 15-18; Comments at 5-7. In this regard, Tribalco states that it prepared a substantially more detailed IMS, but then submitted a less detailed, “filtered” version that was “functionally unreadable”--which Tribalco equates to “clerical errors” that “would be open to correction.” Protest at 15-16. This claim fails for a number of reasons.

First, the record shows that Tribalco’s IMS was not “unreadable”; it simply lacked detail. See AR, Tab 30, Tribalco IMS. Second, Tribalco’s argument amounts to a contention that the agency should have opened discussions to permit the firm to revise its otherwise unacceptable proposal. See Serco Inc., B-406061.1, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 13 (discussions occur when an agency communicates with an offeror to obtain information essential to determine the acceptability of a proposal, or provides an offeror with an opportunity to materially revise or modify its proposal); Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6 (same). The solicitation, however, notified offerors in several places that the agency intended to issue the delivery order without conducting discussions and that offerors therefore should submit “a best and final solution that conforms to all of the terms and conditions of this solicitation.” RFDOP at 3, 5, 28. In general, an agency is under no obligation to conduct discussions where a solicitation includes this type of instruction. See FAR § 15.306(a)(3); Colmek Sys. Eng’g, B-291931.2, July 9, 2003, 2003 CPD ¶ 123 at 7. Further, a contracting officer has broad discretion in deciding whether to hold discussions, Integration Techs. Group, Inc., B-274288.5, June 13, 1997, 97-1 CPD ¶ 214 at 6, and an agency’s decision not to initiate discussions is a matter our Office generally will not review, Kiewit La. Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3.⁵ To conclude, Tribalco’s claims regarding the agency’s evaluation of its IMS are denied.

The Evaluation of IAP’s IMS

Tribalco challenges the agency’s evaluation of IAP’s IMS, arguing that it omitted various PWS requirements or presented them in a manner inconsistent with the PWS. Supp. Protest at 2-7; Supp. Comments at 2-8. Tribalco further argues that the agency treated the offerors disparately by downgrading its proposal based on the omission of requirements from the IMS, but overlooking the omission of similar requirements from IAP’s IMS. Supp. Protest at 2-7; Supp. Comments at 2-10. As

⁵ Moreover, this procurement was conducted pursuant to the provisions of FAR subpart 16.5, which does not establish specific requirements for conducting clarifications or discussions. See Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7.

discussed below, we find that the record shows the agency's evaluation of IAP's IMS was unreasonable and disparate in certain respects.

As previously stated, we review protests of an agency's evaluation to determine whether the record reflects the evaluation was reasonable and consistent with the solicitation's evaluation criteria as well as applicable procurement laws and regulations. See Sci. Applications Int'l Corp., *supra*; NCI Info. Sys. Inc., *supra*. Additionally, while we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. See Sci. Applications Int'l Corp., *supra*; NCI Info. Sys. Inc., *supra*. Finally, it is a fundamental principle of government procurement that a contracting agency must provide a common basis for competition and may not disparately evaluate offerors with regard to the same requirements. See DRS Tech. Servs., Inc., B-411573.2, B-411573.3, Nov. 9, 2015, 2015 CPD ¶ 363 at 10; L-3 Commc'ns Titan Corp., B-299317 *et al.*, Mar. 29, 2007, 2007 CPD ¶ 66 at 13.

Tribalco's first contention regarding the agency's evaluation of IAP's IMS concerns a PWS requirement that the contractor submit a draft "cable acceptance test plan" before each "cable test" and submit a "final cable acceptance test plan" after a "system acceptance test." PWS at 12. The PWS designated the cable acceptance test plan a deliverable, and it stipulated that the agency "shall have fifteen (15) calendar days to review and provide comments on all submitted deliverables." *Id.* at 48, 50.

Tribalco contends that while IAP's IMS included the submission of a draft cable acceptance test plan, it did not include a 15-day review period before the cable test. Supp. Protest at 3 (citing AR, Tab 39, IAP IMS, lines 102). Tribalco further contends that IAP's IMS omitted the submission of a final cable acceptance test plan following the system acceptance test. *Id.* Finally, Tribalco points out that the TET cited the omission of a final cable acceptance test plan in Tribalco's IMS as a basis for the unacceptable rating assigned to its IMS. *Id.* at 4 (citing AR, Tab 44, Tribalco Technical Evaluation Rep., at 5).

As shown above, the agency, in response to Tribalco's challenge against the evaluation of its own IMS, emphasized that the IMS subfactor evaluation criteria included whether an offeror's IMS included, among other things, "**all activities, to include . . . deliverables and delivery schedules**" and "**all deliverable submission dates, all [government] reviews and approvals**, and re-submissions as provided in the requirements in the PWS." CCOSLM at 12 (quoting RFDOP at 21) (emphasis supplied by the agency). Thus, the agency does not--and cannot--take the position that the deliverables and reviews at issue here were not required to be included in an offeror's IMS. Instead, the agency cites several lines of IAP's IMS and asserts that "IAP's IMS in fact includes the Cable Acceptance Test Plan." 2d Supp. AR at 2

(citing AR, Tab 39, IAP IMS, line 101-04). The record, however, does not support this assertion.

The lines of IAP's IMS to which the agency cites address "cable testing" generally, the submission of a "Draft Cable Test Plan," a cable acceptance test, and the submission of a separate PWS deliverable, the "cable acceptance test report." AR, Tab 39, IAP IMS, lines 101-04. Thus, the agency has not shown--and it is not apparent to us--that IAP's IMS included the final cable acceptance test plan that the PWS required. Given that the agency found IAP's IMS acceptable notwithstanding this apparent omission, see AR, Tab 43, IAP Technical Evaluation Rep., at 5-7, and given that the TET repeatedly cited Tribalco's omission of the final cable acceptance test plan in support of the unacceptable rating assigned to Tribalco's IMS, see AR, Tab 44, Tribalco Technical Evaluation Rep., at 5-8, we find this aspect of the agency's evaluation both unreasonable and demonstrative of disparate treatment.

Turning to Tribalco's allegation that IAP's IMS also omitted a required 15-day agency review period for the cable acceptance test plan, the agency responds as follows: "IAP's IMS shows a time period or a pause in the schedule that would allow for the Army's review. During this time period, IAP could finalize the document." 2d Supp. AR at 2-3. Again, we do not see how these assertions are supported by the record.

IAP's IMS included lines to graphically represent the time periods for the different events in the IMS. See AR, Tab 39, IAP IMS. The lines do break between the submission of the draft cable acceptance test plan and the cable testing. See id. at lines 102-03. However, even if we are to assume that this break--or "pause" as the agency terms it--is a review period, the break appears to represent a period shorter than 15 days. See id.

In addition, the agency does not explicitly claim--and it is not clear from the record--that this "pause" is the 15-day review period required by the PWS. We view the contrary conclusion (i.e., that the review was omitted) as more consistent with the record here, given that IAP's IMS expressly includes numerous "government reviews" for other PWS requirements, but does not include such a review in the area of cable testing. See AR, Tab 39, IAP IMS, at lines 28, 47, 123, 130, 210. As stated above, the evaluation criteria for the IMS subfactor included whether an offeror's IMS included "all [government] reviews and approvals . . . as provided in the requirements in the PWS." RFDOP at 21. The TET repeatedly cited the omission from Tribalco's IMS of "[government] reviews and approvals" in support of the unacceptable rating assigned to that firm's IMS. AR, Tab 44, Tribalco Technical Evaluation, at 6-8. Accordingly, we also find this aspect of the agency's evaluation of IAP's IMS unreasonable and demonstrative of disparate treatment.

The agency's oversight regarding the review periods in IAP's IMS apparently was not limited to the cable acceptance test plan. The PWS called for the contractor to conduct three reviews with the agency during the engineering design phase: a preliminary design review, a critical design review, and a final design review. PWS at 6-7. For these reviews, the PWS included the following requirement: "The Contractor shall provide the [agency] a copy of the material that will be discussed during each Design Review [no later than] five (5) calendar days prior to the meeting so the [agency] can review the material and prepare." Id. at 7 (emphasis added). The PWS designated a list of materials and engineering implementation plan to be developed through these reviews as deliverables. Id. at 7, 50. As stated above, the PWS stipulated that the agency "shall have fifteen (15) calendar days to review and provide comments on all submitted deliverables." Id. at 48.

Tribalco alleges that "IAP's IMS entirely fails to provide for Government review of the Engineering Implementation Plan [or list of materials] that are submitted as part of the Engineering Design Process" and that "[n]one of the Preliminary Design Review, Critical Design Review, or Final Design Review [entries in IAP's IMS] provide for a 15-day review period after the submission of the applicable design submittal, as is required by the PWS." Supp. Protest at 2-3 (citing AR, Tab 39, IAP IMS, at lines 40-44); Supp. Comments at 4, 7 (citing AR Tab 39, IAP IMS, at lines 31-50).

In response, the agency states that "[m]inor duration changes within an extensive IMS are acceptable and did not increase risk" and that "there are some dates within IAP's IMS which would need to be reviewed with IAP and addressed during future submissions of the IMS." 2d Supp. AR at 5. The agency also defends this aspect of the evaluation by asserting that IAP's IMS "identifies a noticeable amount of time" between the various reviews. 2d Supp. AR at 2.

The agency's responses do not adequately address apparent inconsistencies that Tribalco has identified between the review time periods stipulated in the PWS and the time periods in IAP's IMS. Further, the agency has conceded that IAP's IMS included "duration changes" and that "some dates" within it "would need to be reviewed." 2d Supp. AR at 5. As already established, the evaluation criteria for the IMS subfactor included whether an offeror's IMS included "all [government] reviews and approvals . . . as provided in the requirements in the PWS." RFDOP at 21. As also already established, the TET repeatedly cited the omission from Tribalco's IMS of "[government] reviews and approvals" in support of the unacceptable rating assigned to the firm's IMS. AR, Tab 44, Tribalco Technical Evaluation, at 6-8. For these reasons, we sustain Tribalco's allegations that the agency evaluated the review periods in IAP's IMS in an unreasonable and disparate manner.

Tribalco also challenges the agency's evaluation of IAP's IMS on the basis that IAP proposed to perform certain tasks in reverse of the sequence specified in the PWS. As stated in the background section above, the IMS subfactor evaluation

criteria included whether the IMS demonstrated “consisten[cy] with the milestones and requirements in the PWS” as well as whether it reflected a “critical logical path that demonstrate[s] events that are dependent upon other events in the baseline schedule [are] in the proper sequence in the implementation timeline.” RFDOP at 21. From this, we think the solicitation is reasonably read to require that an offeror’s IMS present events in a sequence consistent with that of the PWS.

Tribalco’s claims concern two PWS tasks: system “burn-in” and a “joint inventory.” As relevant here, the PWS established that burn-in was to take place after another task, the system acceptance test. In this regard, the PWS stated: “The Contractor shall conduct an equipment Burn-In period for each system immediately following the successful completion of [the system acceptance test].” PWS at 12 (emphasis added). Tribalco alleges that IAP’s IMS shows “burn-in taking place in early June,” but the system acceptance test “being scheduled to begin in mid-July,” meaning IAP reversed the sequence. Supp. Protest at 5 (citing AR, Tab 39, IAP IMS, at lines 116, 127).

Regarding the joint inventory, the PWS stipulates that “[t]he Contractor shall participate in the joint inventory [no later than] twenty (20) calendar days after completion of each [system acceptance test].” PWS at 28 (emphasis added). Tribalco alleges that “IAP’s IMS schedules the joint inventory for February--four months before the completion of [the system acceptance test].” Supp. Protest at 6 (citing AR, Tab 39, IAP IMS, lines 66, 127) (emphasis added).

In response to Tribalco’s claim that IAP’s IMS was out of sequence with regard to burn-in, the agency states as follows:

The argument that IAP proposed to conduct Systems Burn-In period ahead of [the system acceptance test] would not result in a technically unacceptable evaluation rating. Tribalco’s theory of providing a perfect IMS with every detail is unrealistic and contrary to the solicitation criteria. This is the rationale for a draft and final submission of the IMS.

2d Supp. AR at 5. This response fails to address Tribalco’s claim that IAP’s IMS was out of sequence with the PWS. Additionally, the agency offers no support for its assertion that an offeror’s IMS was to be an evolving “draft,” and we do not see support for this assertion in the solicitation.

In response to Tribalco’s claim that IAP’s IMS was out of sequence with regard to the joint inventory, the agency states as follows:

The PWS states, “The Contractor shall participate in the joint inventory [no later than] twenty (20) calendar days after completion of each [system acceptance test].” This is the latest date provided. If the

contractor is able to provide a best practice earlier, this could be found to be an acceptable solution, . . . as established in the evaluation of IAP's proposal.

2d Supp. AR at 5 (internal citations omitted). Thus, the agency interprets the phrase "no later than" in the PWS provision to mean an offeror could schedule the joint inventory before the system acceptance test. We find this interpretation unreasonable for several reasons.

First, the PWS reflects--logically--that the make-up of the specific equipment (i.e., the inventory) needed to pass the system acceptance test may not fully be known until the system acceptance test has been successfully completed. See PWS at 10-11. Second, the PWS provision at issue uses the phrase "after completion of each [system acceptance test]" as the reference point. Id. at 28 (emphasis added). Finally, adopting the agency's interpretation would mean the contractor could schedule the joint inventory at virtually any point before the system acceptance test, which could compromise the integrity of the joint inventory given the variables in play prior to the system acceptance test. In sum, we find the agency's responses to Tribalco's allegations that IAP's IMS included events that were out of sequence with the PWS unpersuasive, and we sustain these allegations.⁶

Before concluding, we note that the agency advances another, more global defense of its evaluation of IAP's IMS--namely, that the evaluation should stand, notwithstanding any flaws in it, because Tribalco's IMS included comparatively more discrepancies with the PWS than IAP's. 2d Supp. AR at 5-6. This amounts to an argument that Tribalco was not prejudiced by the agency's actions. We disagree.

It is true that, standing alone, the agency's evaluation of Tribalco's IMS as technically unacceptable passes muster. However, and as discussed in detail above, the record shows the agency's evaluation of IAP's IMS was flawed such that IAP's IMS also should have been found technically unacceptable. In addition, the

⁶ Tribalco also alleges that the agency misevaluated IAP's IMS with regard to notification and conference requirements in the PWS. Supp. Protest at 3; Supp. Comments at 4-5. As discussed above, the agency has emphasized that the solicitation contemplated an evaluation "on the acceptability of the [IMS] to include **all activities**." CCOSLM at 12 (quoting RFDOP at 21) (emphasis supplied by the agency). In addition, the IMS subfactor evaluation criteria included whether the IMS presented "[a]ll events that the Offeror will perform from contract award to project closeout." RFDOP at 21-22 (emphasis added). It is not clear to us--and the agency has not adequately explained--why the notification or conference requirements do not qualify as "activities" or "events" to be included in the IMS. Thus, while the merit of these allegations is less clear-cut than those discussed above, we also see these allegations as having merit.

record shows that the agency overlooked omissions in IAP's IMS, while identifying similar omissions in Tribalco's IMS as a basis for finding Tribalco's IMS technically unacceptable. This disparate treatment was inconsistent with the agency's duty to treat offerors equally and thus was improper. Finally, the record reflects that IAP's proposed price was more than \$73 million higher than Tribalco's proposed price. Under these circumstances--where the source selection was to be based on the lowest-priced, technically acceptable offer; the agency's evaluation of technical acceptability is found to be unequal; and the award was based on the higher-priced proposal--we find sufficient evidence that Tribalco was prejudiced by the agency's actions.⁷

RECOMMENDATION

We recommend that the agency conduct discussions with Tribalco and IAP, request revised proposals from the firms, and make a new source selection decision based on the reevaluation. To the extent the agency believes the solicitation does not accurately reflect its needs--particularly the IMS subfactor evaluation criteria or any PWS provisions implicated in this protest--we recommend that the agency revise the solicitation before seeking revised proposals. If, after the reevaluation, Tribalco's proposal is found to be the lowest-priced, technically acceptable proposal, we recommend that the agency cancel IAP's deliver order and issue a new delivery order to Tribalco. Finally, we recommend that the agency reimburse Tribalco for its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with section 21.8(f) of our Bid Protest Regulations, Tribalco's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel

⁷ IAP raises a similar argument to the agency's, but invokes the principle that where an agency waives a requirement, the question of prejudice turns on whether the protester would have submitted a different offer with a reasonable possibility of being selected for award had it known the requirement would be waived. IAP Supp. Comments at 6-7 (citing DRS Network & Imaging Sys., LLC, B-413409, B-413409.2, Oct. 25, 2016, 2016 CPD ¶ 315 at 10). This principle is inapplicable here because the agency did not waive requirements. Rather, the agency found that IAP's IMS met PWS requirements when the record does not support this finding. The record further shows that the agency treated the offerors disparately by identifying omissions in Tribalco's IMS but overlooking similar omissions in IAP's IMS.