



Decision

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Matter of: Enterprise Services LLC

File: B-414230.3; B-414230.4

Date: September 17, 2018

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DIGEST

1. Protest challenging assignment of significant weaknesses to proposal is denied where the record confirms that the agency's concerns were valid because the protester's allocation of certain costs was contrary to the solicitation's direction.
2. Protest alleging that agency failed to conduct meaningful discussions is denied where the agency was not required to discuss significant weaknesses that first appeared due to a solicitation amendment that was issued after the agency conducted discussions.
3. Protest arguing that awardee impermissibly qualified its fixed prices is denied where awardee merely identified thresholds for changes in volumetric data that would result in discussions with the agency, as required by the solicitation.

DECISION

Enterprise Services LLC, (ES) of Herndon, Virginia, protests the issuance of a task order to CACI, Inc.-Federal, of Chantilly, Virginia, pursuant to task order request for proposals (TORP) No. HSTS03-16-R-CIO001, which was issued by the Department of Homeland Security (DHS), Transportation Security Administration (TSA), for information technology (IT) support services. ES challenges the assignment of two significant weaknesses to its proposal, objects to the agency's discussions, and asserts that CACI's proposal impermissibly qualified its fixed prices.

We deny the protest.

BACKGROUND

On May 9, 2016, TSA issued the solicitation on an unrestricted basis to firms holding functional category 1 contracts under DHS's Enterprise Acquisition Gateway for Leading-Edge Solutions II (EAGLE II) indefinite-delivery, indefinite-quantity (IDIQ) contract vehicle. Agency Report (AR), Tab 43, TORP amend. 16, at 02754.¹ The TORP contemplated the issuance of a single task order, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, for a wide range of IT support services for TSA's Office of Information Technology (OIT). Id.; AR, Tab 44, TORP amend. 16, attach. 1, Statement of Objectives (SOO), at 02865. The procurement is known as the IT management, performance analysis, and collaborative technologies (IMPACT) acquisition. TORP amend. 16, attach. 1, SOO, at 02865.

The TORP included a statement of objectives that described the scope and objectives of the IMPACT task order. According to the SOO, the overarching objectives of the procurement (in summary form) were for the contractor to operate and maintain TSA's legacy IT capabilities; manage and maintain on-going relationships with TSA's technology providers; identify, diagnose, and describe quantifiable, defined enhancements throughout the course of the contract; execute an IT service delivery model that meets TSA's service level requirements; and provide program management activities and other general contract management services. Id. at 02867. The IMPACT SOO contemplated services under four task areas: general services; operations and maintenance; project engineering support for the IT enterprise; and project management, engineering, and deployment services to address special project installs, moves, adds, and changes (SPIMACs). Id. at 02869-85. The procurement was to support 80,000 federal employees, contractors, and support personnel at various sites, including TSA's headquarters, approximately 600 field sites (such as airports), and more than 50 other international and mission support sites.² Id. at 02866.

Relevant to this protest is the TORP's contract line item structure. Specifically, the TORP contemplated the issuance of a hybrid task order that included fixed-price, cost-reimbursable, and time-and-materials/labor-hour contract line item numbers (CLINs) covering a transition-in period, a 9-month base period, and three option

¹ The agency incorporated a sequential page numbering system on agency report materials, which we cite to herein.

² As discussed below, the TORP contained a list of the many systems to be supported by the IMPACT contractor. AR, Tab 23, TORP amend. 15, attach. 4, Systems Support List, at 00386-88. In addition, TSA established a virtual reading room (VRR) where the agency provided offerors with volumetric data relevant to the procurement. TORP amend. 16, attach. 1, SOO, at 02866.

periods.³ TORP amend. 16, at 02756. The CLINs primarily covered two groups of support services: those supporting TSA's OIT (i.e., CLINs x004, x005, x006, and x008) and those supporting TSA's Security Technology Integration Program (STIP)⁴ (i.e., CLINs x009-x012).⁵ Id. According to the contracting officer, the CLIN structure was designed to allow the government to obtain fixed prices for the "routine operation and maintenance of information services and processes," whereas the costs of improving information services and processes, which are often unknown, would be covered by time-and-materials CLINs. Supp. Contracting Officer's Statement (COS) at 3. In addition, cost-reimbursable travel CLINs were included to direct contractor travel "for purposes unrelated to their routine operations and maintenance duties."⁶ Id.

The TORP provided that the task order would be issued on a best-value tradeoff basis, considering offerors' responses to the following evaluation factors: technical approach, management, transition-in, and price. Id. at 02856-87. The technical and management factors were of equal importance and more important than the transition-in factor; the non-price factors, when combined, were more important than price. Id. at 02858.

With respect to the technical approach factor, the TORP instructed offerors to develop their own performance work statement (PWS) that described the services the offeror

³ The TORP stipulated that the exact period of performance would be determined upon issuance of the order, and that the third option period, which was listed as covering one month, would not extend beyond September 26, 2021, consistent with the requirements of the EAGLE II contract. TORP amend. 16, at 02759.

⁴ According to the SOO, STIP is a TSA-wide IT program that "enables TSA to move their established airport security system to the next generation of capability by connecting a myriad of Transportation Security Equipment (TSE) to one network." TORP amend. 16, attach. 1, SOO, at 02881. While TSE hardware deployments and application development is not part of the IMPACT effort, STIP establishes a centralized enterprise data management system that facilitates the exchange of information between the TSEs located at the nation's airports and the people who use and maintain them. Id. STIP supports new, innovative approaches to exchanging information and servicing equipment. Id. The SOO explained that many of the efforts under STIP are duplicative of activities to be performed under other SOO subtasks (e.g., operations and engineering support services and end user support services), but that the SOO broke out actions performed under the STIP subtask separately for the purpose of pricing under CLINs x009-x012. Id.

⁵ CLINs x001 and x002 were for the transition-in period; CLIN x003 was for "general services" tasks; and CLIN x007 was reserved. TORP amend. 16, at 02756. None of these CLINs is at issue here.

⁶ The OIT and STIP cost-reimbursable travel CLINs included not-to-exceed amounts that totaled \$1,417,000 and \$240,850, respectively, across the base and option years. TORP amend. 16, at 02756-58.

would perform to meet or exceed the SOO objectives and service level requirements (SLRs). Id. at 02843. The TORP also instructed offerors to submit a technical approach that detailed how the offeror would deliver the services in the offeror-proposed PWS, as well as submit service level agreements (SLAs) that addressed the minimum SLRs and any other offeror-proposed performance measures. Id. In addition, as part of offerors' price proposals, the TORP required the submission of priced basis of estimates (PBOEs) by CLIN and SOO service area. Id. at 02845-46. The PBOE's were to include “[d]etailed information showing how proposed estimates were developed for each CLIN and performance period including explanations of judgmental factors and specific ratios or percentages of actual amounts from other contracts.” Id. at 02846. Pursuant to the TORP, TSA would evaluate the offeror's technical proposal and elements of the PBOE “to determine the feasibility and congruity” of the proposal to meet or exceed the TORP objectives and SLRs. Id. at 02857.

Following discussions (which are addressed in more detail below), TSA received final task order proposals from ES, CACI, and three other firms by the January 22, 2018, final proposal due date. AR, Tab 75, Source Selection Evaluation Board (SSEB) Tradeoff Analysis and Award Recommendation, at 06168. A technical evaluation team (TET) reviewed the final proposals under the non-price factors, identified proposal strengths, weaknesses, and risks, and assigned adjectival ratings under each factor. See, e.g., AR, Tab 70, TET Consensus Report for ES, at 06036-50. A price evaluation team (PET) analyzed the offerors' revised price proposals and documented its price evaluation findings. See AR, Tab 67, Price Evaluation Report, at 05980-90. TSA evaluated ES's and CACI's final proposals as follows:

	Technical Approach	Management	Transition-In	Total Evaluated Price
ES	Satisfactory	Outstanding	Satisfactory	\$200,605,280
CACI	Satisfactory	Satisfactory	Satisfactory	\$178,033,220

AR, Tab 75, SSEB Tradeoff Analysis and Award Recommendation, at 06169.

In rating ES's final proposal satisfactory under the technical approach factor, the TET identified six strengths, seven areas of risk, and, relevant here, two significant weaknesses due to how the firm allocated travel expenses in its proposal.⁷ AR, Tab 70, TET Consensus Report for ES, at 06037-45. The PET also documented the concern about ES's compliance with the TORP's directions regarding travel. AR, Tab 68, Price Analysis Report for ES, at 05997.

⁷ According to the record, the identified risks were not part of the tradeoff analysis because they were either “non-material ambiguities or apparent clerical mistakes.” AR, Tab 74, Tradeoff Briefing to Source Selection Authority (SSA), at 06125.

Following a briefing by the SSEB, the source selection advisory committee (SSAC) agreed with the SSEB that CACI's proposal represented the best overall value to TSA. AR, Tab 72, Tradeoff Briefing to SSAC, at 06064-06116. The SSAC specifically highlighted three CACI strengths as key discriminators. AR, Tab 73, SSAC Memorandum, at 06117-20.

The source selection authority concurred with the SSAC's and SSEB's assessment that CACI's proposal represented the best value to the agency. AR, Tab 77, Source Selection Decision Memorandum (SSDM), at 06252. In reaching this conclusion, the SSA specifically mentioned the significant weaknesses assigned to ES's proposal, noting that ES's failure to follow the TORP's instructions regarding travel presented "a real risk that travel expenses [would] exceed the specified ceilings, leading to contract price adjustments." Id. at 06247-48. The SSA concluded that ES's strengths did not offset the proposal's "inherent risks" and price premium. Id. at 06250-51. Based in part on "budgetary considerations," the SSA ultimately selected CACI's lowest-priced proposal as the best value to TSA. Id. at 06251-52.

TSA issued the order to CACI on June 1, and provided ES an in-person debriefing on June 7. COS at 10. This protest followed on June 12.⁸

DISCUSSION

ES protests the two significant weaknesses assigned to its technical proposal due to how the firm allocated travel. See Protest at 14-23; Comments/Supp. Protest at 4-17. ES also contends that TSA failed to conduct meaningful discussions on the topic. See Protest at 23-26; Comments/Supp. Protest at 17-22. In addition, the protester alleges that CACI's final proposal contained an ambiguity as to whether the firm improperly was providing a contingent offer. Comments/Supp. Protest at 23-30. According to ES, these alleged evaluation improprieties led to a flawed source selection decision. Based on our review of the comprehensive record, we see no basis to sustain ES's protest.⁹ We address each argument in turn.¹⁰

⁸ Two other interested parties filed pre-award protests challenging the terms of the IMPACT TORP. Our Office dismissed one due to the protester's failure to file comments on the agency's report, B&D Consulting, Inc., B-414230, Feb. 2, 2017 (unpublished decision), and dismissed the others in light of the agency's determination to take corrective action in response to certain protest grounds and because other protest allegations were premature. CSRA LLC, B-414881, B-414881.2, July 31, 2017 (unpublished decision); CSRA LLC, B-414230.2, Dec. 11, 2017 (unpublished decision).

⁹ Because the awarded value of the task order exceeds \$10 million, this protest is within our jurisdiction. See 41 U.S.C. § 4106(f).

¹⁰ While our decision addresses ES's primary arguments, we have considered all of ES's concerns and find that none provides a basis to sustain the protest. In addition, the protester expressly withdrew additional protest grounds that were presented in its
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Technical Evaluation

ES argues that the agency incorrectly concluded that the firm proposed travel for operations and maintenance (O&M) tasks under the cost-reimbursable CLINs. According to ES, the two significant weaknesses were “wholly unreasonable and unsupported” because other sections of the proposal confirmed that O&M travel was built into the firm’s fixed prices and it only intended to use the cost-reimbursable CLINs for government-directed travel. Protest at 15-16; Comments/Supp. Protest at 5-10. In this respect, ES insists that its proposal was “clear, unequivocal, and fully compliant with the RFP instructions to offerors.” Comments/Supp. Protest at 4.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency’s discretion, because the agency is responsible for defining its needs and the best method of accommodating them. URS Fed. Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. M.A. Mortenson Co., B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 4-5. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7. In addition, an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

As noted above, the IMPACT procurement contemplated IT support services at various sites throughout the country and internationally; accordingly, travel to these sites to perform SOO tasks was anticipated. See TORP amend. 16, attach. 1, SOO, at 02866. In addition, the TORP included fixed-price CLINs, which the TORP identified as being used for OIT O&M (CLIN x004) and STIP O&M (CLIN x009), as well as cost-reimbursable CLINs, which were titled “OIT Travel” (CLIN x008) and “STIP Travel” (CLIN x012). TORP amend. 16, at 02756.

During a review of proposals prior to the issuance of amendment 15, the contracting officer became aware that offerors appeared to use the cost-reimbursable travel CLINs (x008 and x012) to account for travel to perform the O&M activities that fell under the fixed-priced CLINs (x003, x004 and x009). Supp. COS at 1. To be clear, the TORP at that time did not explicitly prohibit this use for the cost-reimbursable travel CLINs. Id.:

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initial protest and supplemental filing. See Comments/Supp. Protest at 23 n.9 (withdrawing protest allegation questioning whether CACI’s proposed level of effort was consistent with its technical approach); Supp. Comments at 2 n.2 (withdrawing allegation that TSA unequally assigned technical strengths). As such, we do not address these protest grounds further.

see 2nd Supp. COS at 2; see AR, Tab 84, TORP amend. 14. The contracting officer realized, however, that there was a cost risk to the government if the ceilings on the reimbursable CLINs were exceeded. Supp. COS at 1. Consequently, the contracting officer determined that the TORP instructions regarding the use of the cost-reimbursable travel CLINs “required further clarification to prohibit their use for O&M-related travel.” Id.

On December 22, 2017, the agency issued TORP amendment 15 specifically to address the travel-related expenses and the delineation between O&M travel and government-directed travel.¹¹ Id. at 3; 2nd Supp. COS at 2. The amendment added the following clarifying language in the TORP’s pricing schedule:

Travel (CLINs 0001, 0002, x008, x012) In accordance with 3.35 –
52000.231.001 Travel and Per Diem (2015) of this Task Order.

* * * *

- Operations and Maintenance (O&M) CLINs (x003, x004, x009) shall include all travel-related expenses associated with O&M activities.
- Travel reimbursement CLINs x008 and x012 are for Government-directed travel only and shall not be used for support associated with CLINs (x003, x004, x009).

AR, Tab 19, TORP amend. 15, at 00151.

During its review of ES’s final proposal, the TET identified two nearly identical concerns regarding how ES proposed travel. Specifically, the TET found that ES had included O&M travel not directed by TSA as part of the cost-reimbursable travel CLINs, for both OIT travel and STIP travel, contrary to the TORP amendment 15 instruction. AR, Tab 70, TET Consensus Report for ES, at 06040-42. The TET expressed concern that this approach--charging O&M travel to the cost-reimbursable CLINs--would cause the ceiling on the cost-reimbursable travel (CLINs x008 and x012) to be reached prematurely, which would reduce TSA’s ability to direct contractor travel in support of other non-O&M-related government priorities. Id. at 06040-41. The TET also noted that in ES’s PWS, the firm stated that it would travel “as directed and approved by the TSA”

¹¹ Days prior to issuing amendment 15, the contracting officer held face-to-face meetings with representatives from each offeror during which the contracting officer clarified the use of the travel CLINs. Supp. COS at 2. She reports specifically advising offerors that all travel-related expenses associated with each offeror’s respective O&M activities had to be included in the fixed-price CLINS (x003, x004, and x009) and not in the cost-reimbursable CLINS (x008 and x012). Id.; COS at 7. The travel CLINS were to be used only for government-directed travel, she explained. AR, Tab 12, ES Face-to-Face Meeting Minutes, at 00108.

to support both OIT and STIP. AR, Tab 55, ES Final Proposal, Vol. 1, at 03015. The TET interpreted this language as expecting TSA to approve all dispatch travel (i.e., for O&M tasks), which the TET criticized as placing “additional burden on the Government.” AR, Tab 70, TET Consensus Report for ES, at 06041-42. Consequently, the TET assigned ES’s proposal the two significant weaknesses at issue: one due to how the firm handled OIT travel and the other for STIP travel.¹² Id.

Here, we have no basis to question the assignment of the significant weaknesses. In this respect, the record confirms that the protester failed to revise its proposal in response to the new TORP direction regarding the newly restrictive use of the cost-reimbursable travel CLINs. In its PBOE for CLIN x008 (reimbursable OIT travel), which remained unchanged in relevant part from its prior proposal submissions, the firm explained that the CLIN encompassed travel to “unmanned airports . . . to perform preventive maintenance and break fixes.” AR, Tab 58, ES Final Proposal, Vol. 4, at 04053. As the TET highlighted, preventive maintenance and break fixes are tasks performed under the OIT O&M CLIN. AR, Tab 70, TET Consensus Report for ES, at 06041. In fact, ES explained the rationale for its pricing as follows:

We based our estimate on a bottom-up analysis to determine the required number of site visits to support OIT infrastructure to perform the activities required to perform preventive maintenance and break fixes using our team’s historical data that we have accumulated from supporting other programs

We have estimated the monthly ticket volume for remote sites to be [DELETED] tickets. Our teammate[s] . . . historical data on [the predecessor contract] showed that [DELETED] of the remote sites’ ticket will require a site visit. Based on this statistic, we estimate the need for [DELETED] daily trips per month. Each round trip is estimated at [DELETED] miles plus parking and toll fees.

AR, Tab 58, ES Final Proposal, Vol. 4, at 04053.¹³ The firm also included estimates of the number of round trips it anticipated in the base and option periods. Id. Significantly,

¹² The source selection plan defined a significant weakness as a “flaw in the proposal that appreciably decreases the likelihood of successful contract performance.” AR, Tab 76, Source Selection Plan, amend. 5, at 06238.

¹³ By way of comparison, in its final proposal, CACI expressly acknowledged that TSA “revised its travel reimbursement guidance” via amendment 15, and that now offerors were required “to include all travel-related expenses associated with O&M activities” in the O&M CLINs (x003, x004, and x009). AR, Tab 64, CACI Final Proposal, Vol. 4, at 05288-89. As a result of the amendment, CACI revised its PBOEs to now reflect that CLINs x008 and x012 only included government-directed travel. Id. at 05604-07 (CLIN x008 travel) and 05647-50 (CLIN x012 travel). In fact, the awardee deleted all prior language discussing how it derived its estimates for OIT and STEP travel from the CLIN

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the relevant PBOE section did not refer to any government-directed travel. See id. Likewise, ES's detailed PBOE for the numerous OIT O&M tasks (covered under CLIN x004) did not discuss travel costs whatsoever. See id. at 03976-04032.

ES's PBOE for the STIP reimbursable travel CLIN (x012) contained similar language. In the PBOE, the protester explained that the CLIN encompassed visits to "unmanned airports . . . to perform STIP preventive maintenance, [installs, moves, adds, changes] IMACs, and break fixes." Id. at 04079. ES also provided its estimation methodology and rationale for its STIP travel. Id. As was the case with OIT travel, ES's PBOE for STIP travel made no reference to TSA-directed travel, see id. at 04079-80, and the firm's PBOE for the STIP O&M tasks (covered under CLIN x009) did not expressly discuss any travel costs as part of its fixed price. See id. at 04054-65.

Thus, the record confirms, despite ES's insistence otherwise, that ES apparently allocated O&M travel under the cost-reimbursable travel CLINs, in direct contravention of the revised TORP. Given this defect, we find unobjectionable the TET's assignment of two significant weaknesses to ES's proposal.¹⁴

The protester challenges the weaknesses on numerous bases, primarily asserting that other sections of its proposal support that ES included O&M travel in its fixed prices. First, we are not persuaded by the protester's opinion that general references to travel in various portions of ES's PWS support its position. See Protest at 17-18. Based on our review, these PWS citations do not detail how ES allocated costs for travel to perform the contemplated on-site O&M services. In this respect, clearly the firm anticipated travel during task order performance; how these travel costs were charged to TSA is the issue here.

Likewise, ES's focus on PWS language specifically regarding the travel CLINs (x008 and x012) is also unavailing. For each CLIN, ES's PWS simply provided, "The Contractor shall travel as directed and approved by the TSA" to support OIT or STIP. AR, Tab 55, ES Final Proposal, Vol. 1, at 03015. These statements do not offer any insight into how ES allocated the costs of O&M travel. On the contrary, as the TET

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x008 and x012 basis of estimates and added those pricing rationales to the respective fixed-price CLINs. Id.; see also id. at 05555-57 (CLIN x004 OIT O&M travel) and 05625-26 (CLIN x009 STIP O&M travel).

¹⁴ We also find that ES's complaints that the allocation errors were non-material and that TSA's "maximum exposure . . . was minuscule at worst" reflect nothing more than the firm's staunch disagreement with the impact of TSA's concerns, but do not demonstrate an unreasonable evaluation or otherwise provide a basis to sustain the protest. See Comments/Supp. Protest at 12-14. The agency's concerns with ES's pricing approach, and the ramifications of such an approach, are well-documented throughout the record.

noted, the statements appear to suggest that TSA would have to approve all O&M travel. See AR, Tab 70, TET Consensus Report for ES, at 06041-42.

Moreover, we also find no merit to ES's argument that other areas of its PBOEs demonstrate that the agency's concerns were unreasonable. See Comment/Supp. Protest at 6-8. For instance, ES points to language in its CLIN x0004 (OIT O&M) PBOE that discussed providing field resources "on-site or dispatched to provide on-site user support for all TSA users." Protest at 18, citing AR, Tab 58, ES Final Proposal, Vol. 4, at 04012. We disagree with ES that this reference to dispatched resources--which focused on levels of site support staffing, not travel costs--in any way addressed how the actual travel to provide the O&M support would be charged to the government. Instead, as explained, this information was contained in the PBOEs for the reimbursable CLINs.

Ultimately, regardless of how clear ES believes it was in other parts of its proposal, the fact remains that in its description of what was encompassed under the reimbursable CLINs, ES cited only travel to perform preventive maintenance and break fixes;¹⁵ it did not refer to any government-directed travel for other non-O&M projects or elsewhere address O&M travel costs. AR, Tab 58, ES Final Proposal, Vol. 4, at 04053, 04079. As explained above, preventive maintenance and break fixes are O&M tasks, and the amended TORP prohibited offerors from allocating travel to perform these O&M tasks as part of the reimbursable CLINs. See AR, Tab 58, ES Final Proposal, Vol. 4, at 03989, 04012 (identifying preventive maintenance and break fixes as CLIN x004 O&M tasks). Thus, while ES may have mentioned travel or even represented compliance with the TORP's travel instructions in other parts of its proposal,¹⁶ the firm's PBOEs expressly contemplated travel for O&M tasks under the reimbursable CLINs. To the extent the protester now contends that its proposal submission should have been interpreted differently, the protester's disagreement with the agency's evaluation

¹⁵ The protester does not meaningfully address these dispositive statements in the relevant PBOEs.

¹⁶ Indeed, in a matrix responding to agency discussion comments, ES acknowledged that the TORP's travel costs were for government-directed travel only, and the firm represented that travel to perform its PWS was included in its fixed prices. AR, Tab 54, ES Final Proposal Comment and Response Matrix, at 02937-38 (Item No. 21). As the evaluators noted, this representation by ES was directly at odds with the plain language of ES's relevant PBOEs. See AR, Tab 70, TET Consensus Report for ES, at 06041-42; Tab 68, Price Analysis Report for ES, at 05997. In this regard, we agree with the agency that "merely stating that you have done something in your proposal is not the same as having actually done it." Memorandum of Law (MOL) at 5. As noted above, 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, as was the case here. See Tribalco, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 5.

provides no basis to sustain the protest. See STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 8.

Discussions with ES

Next, ES protests that TSA failed to conduct meaningful discussions with the firm. In this respect, the protester argues that it was improper for TSA not to have raised its concern regarding how the firm allocated travel during discussions.

By way of additional background, following earlier discussions and proposal revisions, the agency received updated proposals from the five offerors in September 2017. In mid-December, before the issuance of amendment 15, TSA sent each offeror a letter providing “evaluation comments” concerning their September 2017 revised proposals. COS at 6; see AR, Tab 10, ES Fair Opportunity Evaluation Notice (EN), Dec. 19, 2017, at 00080-89. Days later, following the contracting officer’s face-to-face meetings with offerors’ representatives, TSA provided each offeror with updated versions of the EN with additional evaluation comments. COS at 7; see AR, Tab 16, Updated ES Evaluation Comments (Redline Version), Dec. 22, 2017, at 00127-36. TSA also issued amendment 15 to the TORP at that time, and requested final proposal revisions.

In TSA’s December 19 and 22 evaluation comments to ES, the agency documented various strengths and risks identified in ES’s September revised proposal (as well as a deficiency, which was addressed and is not at issue).¹⁷ See AR, Tab 16, Updated ES Evaluation Comments (Redline Version), Dec. 22, 2017, at 00127-36. ES complains that TSA did not identify in the evaluation comments any concerns regarding how the firm allocated travel expenses. According to ES, the agency’s failure to raise these concerns resulted in discussions that were not meaningful and warrants sustaining its protest. We disagree.

As noted above, this task order competition was conducted among EAGLE II IDIQ contract holders pursuant to FAR section 16.505. While the FAR does not establish specific requirements regarding the conduct of discussions under a task order competition, exchanges occurring with contract holders of multiple award contracts in a FAR section 16.505 procurement, like other aspects of such a procurement, must be fair. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. In this regard, discussions, when conducted, must be meaningful; that is, they may not be misleading. See, e.g., Sabre Sys., Inc., B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 6 (explaining, in the context of a task order procurement, that discussions must be meaningful). In addition, an agency has no obligation to reopen discussions to allow an offeror additional opportunities to revise its proposal when a proposal defect first becomes apparent in a post-discussion proposal revision. See Cube-All Star Servs. Joint Venture, B-291903, Apr. 30, 2003, 2003 CPD ¶ 145 at 10-11.

¹⁷ The parties do not dispute that the evaluation comments constituted discussions.

Based on the record here, we see nothing improper with the fact that TSA did not raise ES's significant weaknesses as part of discussions. As explained earlier, all exchanges with offerors occurred before the agency issued amendment 15 to the TORP. In this regard, had ES's approach to allocating travel expenses been a concern prior to the issuance of amendment 15, we agree that the issue should have been brought to ES's attention during discussions. However, it was not a concern because the TORP did not include the applicable restrictions regarding the reimbursable travel CLINs at that time. See TORP amend. 14, at 105 (showing no direction or instruction clarifying what travel costs were covered by the reimbursable CLINs). Rather, the restrictions on what travel expenses were permitted under the cost-reimbursable CLINs were first added to the TORP via amendment 15. See TORP amend. 15, at 00151; Supp. MOL at 6. Amendment 15, of course, was issued on December 22, after TSA evaluated the September proposal submissions and after TSA provided offerors with evaluation comments relevant to those submissions.

Thus, at the point when the agency developed comments on the September 2017 proposals, there was no explicit restriction on the use of the travel CLINs and, therefore, no basis for TSA to provide feedback on ES's applicable PBOEs. Put simply, the significant weaknesses did not exist yet.¹⁸ See Research Analysis & Maintenance, Inc., B-410570.6, B-410570.7, July 22, 2015, 2015 CPD ¶ 239 at 11 (finding discussions unobjectionable where proposal defect was introduced due to a solicitation amendment issued simultaneously with discussions); OMNIPLEX World Servs. Corp., B-406251, B-406251.2, Mar. 14, 2012, 2012 CPD ¶ 113 at 6-7 (finding no obligation for agency to reopen discussions after a solicitation amendment).

In its effort to persuade that the discussions were not meaningful, ES re-characterizes its significant weaknesses as being a concern with an apparent inconsistency in its proposal. See Comments/Supp. Protest at 18. Specifically, ES maintains that the significant weaknesses were assigned because ES's PBOEs for the travel CLINs did not match its PWS. Id. at 19. According to ES, because its proposal did not change in relevant part, the alleged incongruence had always been present, and TSA's failure to flag its concern earlier is problematic.

¹⁸ For the record, we find unpersuasive ES's complaint that TSA unequally flagged "issues" with CACI's proposal that stemmed from yet-to-be-issued TORP amendment 15 language as part of discussions. Comments/Supp. Protest at 21-22. In this respect, the evaluation comments show that TSA simply identified CACI proposal assumptions (regarding the frequency of invoicing) that the agency did not accept because TSA planned to expressly address the nature and timing of invoicing in amendment 15. See AR, Tab 11, CACI Fair Opportunity EN, Dec. 19, 2017, at 00097 ("Not accepted. See Amendment A00015."). In our view, the mere reference to amendment 15 in the CACI evaluation comments does not rise to the level necessary for ES to establish unequal discussions, particularly given that the agency did, in fact, advise ES of the new amendment 15 travel CLIN restrictions during discussions, as explained below.

Here, ES's attempt to re-cast the agency's concerns, while creative, has no support in the record. As detailed above, the TET's central concern was that ES allocated its O&M travel costs to the cost-reimbursable travel CLINs, which TORP amendment 15 stipulated should only be used for government-directed travel. See AR, Tab 70, TET Consensus Report for ES, at 06040-42. While the TET did point out that ES's PWS, “[t]aken in context” with ES's unchanged PBOEs, suggested that ES anticipated that TSA would be approving all O&M travel--criticized as a burden to TSA--this was still only an issue in light of the new TORP amendment 15 travel cost restrictions. See id. Indeed, as the SSEB clearly documented, ES's pricing methodology was the problem because it believed the ceilings on the reimbursable CLINs would be “reached prematurely,” which, in turn, would reduce TSA's ability to direct contractor travel. See AR, Tab 75, SSEB Tradeoff Analysis and Award Recommendation, at 06194. Based on our review of the record, we disagree with ES's assessment that TSA's “true concern” was some unclear incongruence; the argument is disingenuous at best, and does not demonstrate unfair discussions.¹⁹ See Comments/Supp. Protest at 20.

In any event, we highlight that the agency specifically put offerors on notice, including ES, that the agency was scrutinizing the allocations of travel costs. In this regard, as mentioned above, the contracting officer held face-to-face meetings with the offerors to “help facilitate” in responding to the evaluation comments distributed a couple days prior. COS at 7. According to her summary of her session with ES representatives, she specifically alerted them that the cost-reimbursable travel CLINs were only for government-directed travel and not to be used as part of ES's PWS solution/model. Supp. COS at 2; AR, Tab 12, ES Face-to-Face Meeting Minutes, at 00108. Thus, nearly contemporaneous with written discussions, TSA advised ES that the firm should ensure compliance with new TORP language regarding the allocation of travel costs.

Likewise, the purpose of amendment 15 was to specifically address the travel-related expenses and the delineation between O&M travel and government-directed travel. Supp. COS at 3. In this respect, the new TORP language unquestionably put offerors on notice that the reimbursable CLINs were now limited to TSA-directed travel. Indeed, as noted above, CACI heeded the direction and revised its PBOEs accordingly. See, supra, at 8 n.12. Despite acknowledging the new travel instruction,²⁰ ES failed to alter its applicable PBOEs, an error that cannot be blamed on unfair discussions.

¹⁹ Equally unavailing is ES's notion that the TORP was clear regarding the use of the reimbursable travel CLINs prior to the restrictive language in amendment 15, and thus ES's proposal was always flawed. Beyond protester's counsel's representations, such a position finds no support in the record. In this respect, as explained, the TORP was silent regarding what costs could be included in the travel CLINs prior to amendment 15. See Supp. MOL at 6; see TORP amend. 14.

²⁰ See AR, Tab 54, ES Final Proposal Comment and Response Matrix, at 02937-38 (acknowledging that the TORP's travel costs were for government-directed travel only and representing that travel to perform the services outlined in its PWS was included in its fixed-prices).

CACI Proposal Assumptions

Lastly, in a supplemental filing, the protester asserts that CACI's proposal assumptions "impermissibly qualified its firm-fixed-prices." Comments/Supp. Protest at 23. Specifically, the protester cites to "triggering events" in CACI's proposal, which, according to ES, would result in a potential change to the level of effort (LOE) and a corresponding price increase. Id. at 25-26. The protester objects to TSA's lack of contemporaneous recognition of what ES interprets as CACI's attempt to qualify its proposal. Id. at 28.

Offerors' proposed levels of effort for various aspects of task order performance were based, in part, on volumetric data estimates provided by TSA in an attachment to the TORP. See AR, Tab 24, TORP amend. 15, attach. 5, Operational Functions and Volumetrics, at 00389-00392. TSA acknowledged, though, that there could be changes in the government's stated baseline quantities during contract performance. Supp. MOL at 10. Accordingly, given that offerors' proposed levels of effort were based on the TSA-provided estimates, the amended TORP instructed offerors to identify any "triggers[,] 'Assumptions, Dependencies, and/or Exceptions' which may result in discussions regarding changes in levels of effort or requests for equitable adjustment." TORP amend. 16, at 02760; see also id. at 02846-47 (instructing offerors to "specify any assumptions, dependencies, and/or exceptions which may result in discussions regarding changes in levels of effort or requests for equitable adjustment").

In its final proposal, consistent with the TORP instructions, CACI documented its assumptions regarding the volumetric data. First, the awardee cited the operational functions and volumetric data provided in TORP attachment 5 as its "only PBOE Assumptions, Dependencies, and/or Exceptions." AR, Tab 64, CACI Final Proposal, Vol. 4., at 05304. The firm also provided a table that specified "thresholds against each individual metric as provided in TORP Attachment 5." Id. In the table, CACI listed the 44 different "Items/Functions" from the TORP's operational functions and volumetrics attachment, the government-provided volume data, and the "CACI Threshold Quantities."²¹ Id. at 05304-05308; see also TORP amend. 15, attach. 5, Operational Functions and Volumetrics, at 00389-00392. For instance, for "Patch Management," CACI listed [DELETED] devices as the TSA-provided data, and listed a "[DELETED] in Devices" as the CACI threshold quantity. AR, Tab 64, CACI Final Proposal, Vol. 4, at 05305 (Item No. 16). For "Deskside Support," CACI identified [DELETED] locations (approximately [DELETED] users) as the TSA-provided data, and listed a threshold quantity of "[DELETED]" in campus locations. Id. (Item No. 21).

According to ES, CACI's approach is problematic. The protester specifically highlights that while prior versions of CACI's proposal described what action CACI would take if "pertinent metrics" proved "materially different," the awardee had removed this language

²¹ CACI repeated the same information, where applicable, throughout its PBOEs. See, e.g., AR, Tab 64, CACI Final Proposal, Vol. 4, at 05392-95.

in its final proposal. Comments/Supp. Protest at 25-26, citing AR, Tab 64, CACI Final Proposal, Vol. 4, at 05304 (redline version showing, in strike-through, that CACI had “reserve[d] the right to adjust our LOE and/or SLAs as agreed upon with the Government”). ES complains that CACI’s final proposal was silent on what action would result from the triggers, namely “discussions, requests for equitable adjustment, a reservation to raise its price wholesale, or all three.”²² Id. at 26. ES therefore argues that the table in CACI’s proposal “essentially de facto qualifies CACI’s offer as any upward deviation at all for those quantities would trigger a renegotiated price.” Id. at 28.

The requirement to propose fixed prices is a material term or condition of a solicitation requiring such pricing. Advanced Techs. & Labs. Int’l, Inc., B-411658 et al., Sept. 21, 2015, 2015 CPD ¶ 301 at 10. Where a solicitation requests offers on a fixed-price basis, an offer that is conditional and not firm cannot be considered for award. Dev Tech. Group, B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 5.

Here, we find no merit to this protest ground. In this respect, as noted above, the TORP expressly required that offerors document “any triggers . . . which may result in discussions regarding changes in levels of effort or requests for equitable adjustment.” TORP amend. 16, at 02760. The record reflects that CACI followed this instruction in its final proposal, listing the metrics and volume data that would trigger discussions with TSA. See AR, Tab 64, CACI Final Proposal, Vol. 4, at 05304-08. CACI’s volumetric triggers did not take exception to the fixed-price nature of the task order, nor did the proposal state that the awardee would refuse to perform in the event of volumetric changes beyond its stated thresholds. See BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 15 (denying protester’s assertion that awardee qualified its fixed-price offer). Indeed, CACI’s approach is similar to, albeit more detailed than, ES’s assumption, which proposed a [DELETED] “[DELETED] volume change” as its trigger. See AR, Tab 58, ES Final Proposal, Vol. 4, at 03899. We disagree with ES’s suggestion that abiding by the TORP instructions resulted in the submission of a qualified offer--for the awardee, as well as the protester, ostensibly.²³

In addition, we do not agree that CACI’s final proposal was ambiguous because it no longer specifically described what action the awardee would take in the event quantities or metrics changed beyond its thresholds. See Comments/Supp. Protest at 25; AR, Tab 64, CACI Final Proposal, Vol. 4, at 05304 (redline version). In this respect, contrary to ES’s view, CACI’s proposal was not ambiguous because the revised TORP provided

²² By way of comparison, in its proposal, ES provided that a “[DELETED] volume change” would “trigger a price discussion” between TSA and the firm. AR, Tab 58, ES Final Proposal, Vol. 4, at 03899.

²³ Indeed, the SSA even expressed concern because a different disappointed offeror entirely failed to “provide triggers for volume data with no assurance that any changes encountered would be performed at no additional costs to the TSA” AR, Tab 77, SSDM, at 06252.

this information. That is, when CACI submitted its original assumption language, the TORP was silent regarding triggers--the TORP did not describe what would occur if metrics changed. See TORP amend. 14. As discussed above, the new TORP language--added in amendment 15 and revised in amendment 16--directly addressed triggers that, unequivocally, would result in discussions regarding changes in levels of effort or requests for equitable adjustment. See TORP amend. 16, at 02760, 02846-47. In our view, the fact that ES's proposal repeated what the TORP expressly contemplated (i.e., a discussion with the agency), whereas CACI's did not, is not a "massive potential risk," as ES asserts. See Comments/Supp. Protest at 28. Simply put, the record does not support ES's assertion that CACI impermissibly qualified its fixed prices; rather, the awardee's proposal, including its assumptions, complied with the TORP instructions.

In sum, we find unobjectionable the significant weaknesses assigned to ES's proposal due to concerns regarding how the firm allocated travel expenses, and we disagree that the weaknesses were the result of flawed discussions. We also find no merit to ES's challenge to CACI's proposal triggers. Given that these protest allegations are without merit, ES's objection to the source selection decision, which is based entirely on these alleged flaws, fails. See Chemonics Int'l, Inc., B-409346.3 et al., Dec. 11, 2014, 2014 CPD ¶ 368 at 24.

The protest is denied.

Thomas H. Armstrong
General Counsel