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# Decision

**Matter of:** Aviation Ground Equipment Corporation

**File:** B-417711.2; B-417711.3

**Date:** May 3, 2021

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## DIGEST

1. Protest alleging that agency miscalculated proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest arguing that agency improperly allowed awardee to cure a late proposal by providing missing information during discussions is denied.
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## DECISION

Aviation Ground Equipment Corporation (AGEC), a veteran-owned small business of Melville, New York, challenges the award of a contract to Essex Electro Engineers, Inc., of Schaumburg, Illinois, under request for proposals (RFP) No. N68335-19-R-0105 by the Department of the Navy, Naval Air Systems Command, for land-based mobile electric power plants (LMEPPs). The protester alleges that the agency erred in its evaluation of proposals in numerous respects.

We deny the protest.

## BACKGROUND

The agency issued the solicitation on January 23, 2020, seeking LMEPPs, which are self-contained, diesel-powered, towable generators used to provide electrical power in support of Naval aircraft maintenance. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. The RFP was a 100 percent small business set-

aside, and contemplated the award of a single fixed-price, indefinite-delivery, indefinite-quantity contract. *Id.* The RFP also provided for a best-value tradeoff on the basis of three factors (listed in descending order of importance): (1) technical,<sup>1</sup> (2) past performance, and (3) price. Agency Report (AR), Tab 2, RFP at 83. The technical factor included three subfactors: (1) technical approach, (2) logistics, and (3) management. *Id.* Although the RFP established the technical and past performance factors, when combined, as significantly more important than price, the RFP explained that price was an important factor that should not be ignored. *Id.* Further, the RFP noted that as ratings of proposals become more equal with respect to non-price factors, price will become more significant when deciding which offer represents the best value to the government. *Id.*

Concerning the technical evaluation factor, among other things, the RFP required LMEPPs of solid-state design and capable of 120 kilo-volt-amperes (KVA) continuous output. AR, Tab 2c, System Specification at 15, 22. The RFP noted, however, that offerors proposing LMEPPs capable of outputs greater than or equal to 140 KVA may receive additional consideration in their technical ratings. RFP at 85. Additionally, during a question and answer period, a prospective offeror asked whether the LMEPPs were required to power the E2-D Advanced Hawkeye aircraft, and the agency responded that the proposed LMEPPs will need to power the E2-D for ground maintenance. RFP at 104.

As to past performance, the RFP provided that past performance would be evaluated for: (1) recency, (2) relevance, and (3) past performance information. *Id.* at 71. The RFP noted that past performance would receive one of the following relevance ratings: (1) very relevant, (2) relevant, (3) somewhat relevant, or (4) not relevant. *Id.* at 88. Further, the RFP notes that offerors would receive one of the following performance confidence ratings: (1) substantial confidence, (2) satisfactory confidence, (3) neutral confidence, (4) limited confidence, or (5) no confidence. *Id.* at 89.

With respect to price, the RFP provided that prices will be evaluated to determine whether they are complete, reasonable, and contain balanced unit pricing. RFP at 85. Further, the RFP noted that, normally, competition establishes price reasonableness, but, in limited situations, additional analysis may be required. *Id.* at 87. Specifically, the RFP noted that, in the event adequate price competition does not exist after receipt of proposals, the agency may request additional cost or pricing data and may conduct negotiations in order to ensure a reasonable and realistic price. *Id.* at 76.

In response to the RFP, the agency received five offers, including one from AGECE and one from Essex. COS/MOL at 5-6. On September 30, 2020, the agency established a

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<sup>1</sup> The RFP provided that technical proposals would receive separate ratings for technical and risk. RFP at 87. Proposals would receive one of the following technical ratings: (1) outstanding, (2) good, (3) acceptable, (4) marginal, or (5) unacceptable. *Id.* at 88. Proposals would also receive one of the following risk ratings: (1) low, (2) moderate, (3) high, or (4) unacceptable. *Id.*

competitive range including three offerors and opened discussions. *Id.* Each offeror in the competitive range received evaluation notices, and the agency conducted several rounds of discussions with both AGECE and Essex. *Id.* On December 2, the agency requested final proposal revisions (FPRs), and on December 4 the agency received three FPRs, including FPRs from AGECE and Essex. *Id.*

The agency evaluated AGECE's and Essex's FPRs as follows:

Evaluation Factors	AGECE	Essex
<b>Technical</b>	Outstanding/Low Risk	Outstanding/Low Risk
<b>Technical Approach</b>	Outstanding/Low Risk	Outstanding/Low Risk
<b>Logistics</b>	Acceptable/Moderate Risk	Acceptable/Low Risk
<b>Management</b>	Good/Low Risk	Outstanding/Low Risk
<b>Past Performance</b>	Substantial Confidence/Relevant	Satisfactory Confidence/Very Relevant
<b>Price</b>	\$62,553,469	\$46,638,225

COS/MOL at 7.

On December 21, the source selection authority (SSA) concluded that Essex's proposal represented the best value to the government because it was technically equal to AGECE's proposal, and the difference in past performance did not justify the significant price difference. AR, Tab 28, SSA Final Determination at 2. On January 13, 2021, the agency made award to Essex, and AGECE requested and received a debriefing. COS/MOL at 7. This protest followed.

## DISCUSSION

The protester challenges the agency's evaluation of proposals in numerous respects.<sup>2</sup> First, the protester alleges the awardee's proposed LMEPP could not provide 140 KVA, and therefore did not satisfy a material requirement of the solicitation. Comments and Supp. Protest at 11-13. Second, the protester argues the agency's evaluation of the protester's past performance was unreasonable. *Id.* at 21-32. Third, the protester

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<sup>2</sup> The protester advanced certain other arguments not addressed in this decision. We have considered these arguments and conclude that none provide a basis to sustain the protest. For example, the protester initially argued that Essex's product did not meet the solicitation's requirement that portions of LMEPPs must be of solid state design. See Protest at 14-16. The agency responded to this protest argument at length in the agency report, but the protester's comments did not address the agency's rebuttal. See COS/MOL at 10-12. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to or rebut the agency's position, we deem the initially raised arguments abandoned. *Citrus College; KEI Pearson, Inc., B-293543 et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

alleges the agency erred in its price evaluation by failing to perform a price reasonableness or price realism analysis as required by the solicitation. *Id.* at 14-21. Finally, the protester contends the awardee's initial proposal was incomplete and should have been rejected by the agency. According to the protester, the agency, instead, improperly allowed the awardee to submit mandatory components of its proposal after the original deadline for submission. *Id.* at 2-11. We address these arguments in turn.

## Technical Evaluation

First, the protester alleges the awardee's proposed LMEPP could not provide 140 KVA, and therefore did not satisfy a material requirement of the solicitation. Comments and Supp. Protest at 11-13. In this regard, AGEC notes solicitation questions and answers indicated that the LMEPP would need to power the E2-D aircraft for ground maintenance, and further alleges that powering an E2-D aircraft requires 140 KVA. *Id.* at 11-12. Because Essex's proposed LMEPP allegedly cannot provide 140KVA continuously, AGEC argues it does not satisfy this material solicitation requirement, rendering Essex's proposal ineligible for award. *Id.*

When reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protestor's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Hughes Network Sys., LLC*, B-409666.5, B-409666.6, Jan. 15, 2015, 2015 CPD ¶ 42 at 6.

Preliminarily, we note the solicitation directly addresses the subject of LMEPP power output. Specifically, the solicitation provides that LMEPPs must be able to produce 120 KVA continuously, but that LMEPPs that can produce 140 KVA or more may receive additional favorable consideration. RFP at 85; AR, Tab 2c, System Specification at 22. While the protester is correct that the questions and answers confirmed the LMEPP would need to power the E2-D aircraft, there is no discussion in the solicitation of what power output is required to power the E2-D. RFP at 104. Rather, the protester alleges on the basis of its professional experience with E2-D aircraft, an LMEPP must be able to provide 140 KVA in order to power that aircraft. See, e.g., Protest at 14.

Even assuming, for the sake of argument, the protester is factually correct concerning the power draw for the E2-D aircraft, which is not clear, the protester's argument represents a challenge of a patent solicitation defect, which the protester did not raise prior to the time for receipt of proposals. 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. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable

interpretations of the terms or specifications of the solicitation are possible; a patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error. *Id.* Our regulations require that protests of the terms of a solicitation, including protests challenging patent ambiguities, must be filed prior to the time for receipt of proposals. 4 C.F.R. § 21.2(a)(1); *Cleveland Telecomms. Corp.*, B-247964.3, July 23, 1992, 92-2 CPD ¶ 47 at 3-5.

As noted above, the solicitation established a clear requirement for LMEPPs capable of producing a 120 KVA output. Under the protester's reading of the solicitation, however, this minimum requirement is directly at odds with the requirement to power the E2-D aircraft. The protester's argument, at best, establishes a patent uncertainty about the agency's requirements. Having failed to challenge this apparent disconnect prior to the time for receipt of proposals, the protester may not advance a protest allegation based on its own understanding of the terms of the solicitation. Because there is no reasonable suggestion that Essex's product cannot meet the 120 KVA power output requirement on the face of the solicitation, we see no reason to conclude that Essex failed to meet a material solicitation requirement.<sup>3</sup>

#### Past Performance

Next, the protester contends the agency failed to reasonably consider the awardee's negative past performance information. Specifically, of the 14 contractor performance assessment reports (CPARs) the agency found to be recent and relevant, 9 reflected less than satisfactory performance. Comments and Supp. Protest at 31. Those 9 CPARs contained 12 marginal ratings and 5 unsatisfactory ratings. *Id.* at 22. Moreover, for six of the CPARs, the assessing official stated they would not recommend Essex for similar work in the future. *Id.* Finally, the protester notes the CPARs without any negative information contained only one rating higher than satisfactory. *Id.* According to the protester, Essex's generally negative past performance information did not reasonably support Essex's satisfactory confidence rating. *Id.* at 31.

The evaluation of the relative merit or relevance of past performance references is generally a matter within the agency's discretion, which our Office will not disturb unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *American Systems Corp.*, B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; *NCI Information Systems, Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 4; *ORBIS Inc.*, B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 4. A protester's disagreement, without more, does not form the basis for us to conclude that an evaluation was unreasonable. See *DynCorp International, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8.

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<sup>3</sup> We note that the agency concluded in its evaluation that the Essex product can, in fact, produce 140 KVA, but the protester contests whether that was a reasonable reading of Essex's proposal. See Comments and Supp. Protest at 12-13. Because we conclude that the protester's arguments amount to an untimely challenge of a patent ambiguity, we do not reach this issue.

Here, the contemporary record shows the Navy considered the negative past performance information discussed by the protester. See AR, Tab 6, Past Performance Evaluation at 16-31. For example, the agency's assessment noted among other things that "Essex appears to have a turbulent relationship with the [g]overnment" and that Essex received significant negative feedback on Air Force and Defense Logistics Agency contracts. *Id.* at 30-31. However, the agency also noted that Essex assigned a new engineering team in 2016 that has significantly improved its performance on Navy contracts, including a very relevant Navy contract for similar mobile electric power plants. *Id.* The evaluators found that the Navy CPARs since 2017 have been uniformly satisfactory, and the agency noted that Essex proposed the same engineering team for this procurement. *Id.* Based on Essex's recent performance of a very similar requirement for the Navy, the agency concluded that there was a reasonable expectation Essex would successfully perform the current effort and assigned Essex a rating of Satisfactory Confidence. *Id.*

While the agency could have reasonably come to a different conclusion on these facts, the agency did not ignore or overlook the awardee's negative past performance. Rather the agency considered all of Essex's past performance information and decided to give greater weight to its own recent experiences with Essex on very similar requirements. Our decisions have consistently concluded that it is reasonable for an agency to give differing weight to an offeror's prior contracts based on their similarity or relevance to the required effort. See, e.g., *TPL, Inc.*, B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 12. In short, we see no basis to find the agency's evaluation unreasonable.

#### Price Evaluation

Concerning price, the protester advances two arguments. First, AGECE argues the agency did not conduct an adequate price reasonableness analysis. Comments and Supp. Protest at 14-22. Specifically, the protester contends that because its price was significantly higher than the awardee's price, if the agency properly had conducted a price reasonableness analysis and advised AGECE during discussions that its price was too high, it might have reduced its price to be more competitive. *Id.* Second, the protester argues that the agency failed to conduct a price realism analysis as required by the solicitation. *Id.*

It is a fundamental principle of federal procurement law that procuring agencies must condition the award of a contract on a finding that the contract contains "fair and reasonable prices." Federal Acquisition Regulation (FAR) 15.402(a), 15.404-1(a). See *Crawford RealStreet Joint Venture*, B-415193.2, B-415193.3, Apr. 2, 2018, 2018 CPD ¶ 121 at 9. The purpose of a price reasonableness analysis is to prevent the government from paying too high a price for a contract. *Crawford RealStreet Joint Venture*, *supra*. Additionally, as a general matter, discussions, when conducted, must be meaningful--that is, they must identify deficiencies and significant weaknesses that exist in an offeror's proposal. See, e.g., *Epsilon Systems Solutions, Inc.*, B-409720,

B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 16. However, with respect to price, agencies are not required to advise a firm during discussions that its prices are considered high, unless the agency has determined that the offeror's pricing is unreasonably high, such that the pricing would preclude award to the firm. *Patriot Taxiway Industries, Inc.*, B-403690, Dec. 6, 2010, 2010 CPD ¶ 291 at 9.

Here, the protester does not argue that the awardee's price was unreasonable, or that the agency erroneously found the protester's own price unreasonable. Rather, the protester argues, in effect, the agency should have found the protester's own price unreasonable and raised the fact of its unreasonably high price during its discussions with the protester. Comments and Supp. Protest at 15-17. The protester's arguments stumble at the gate, however, because the record reflects that the agency appropriately found the protester's price reasonable.

The record reflects the agency assessed the reasonableness of prices it received after receipt of FPRs, and it is uncontested that the agency did not find the protester's price unreasonable or disqualify the protester from award on the basis of its price. Indeed, the protester's proposal was considered for award and included in the best-value tradeoff decision. AR, Tab 28, SSA Final Determination at 1-2. The record also reflects that the evaluators concluded that the offerors' prices were reasonable because the agency received adequate price competition in accordance with FAR section 15.403-1(c)(1). See AR, Tab 7b, Final Price Evaluation. In this regard, the agency notes that it received five independent offers of which three were included in the competitive range, and that the agency compared the prices it received to each other and to the independent government cost estimate (IGCE). *Id.*; COS/MOL at 16.

Nonetheless, the protester argues the agency's price reasonableness analysis of its proposal was flawed. Comments and Supp. Protest at 15-17. According to the protester, adequate price competition alone was not sufficient to establish price reasonableness when the protester's price was approximately 35 percent higher than the awardee's price and 30 percent higher than the IGCE. Given this delta, the protester argues the agency should have found its price unreasonable. *Id.*

In our view, the crux of the protester's argument--that its own price should have been found unreasonable--is without support. First, a 35 percent price difference is not *per se* unreasonable. Compare *Grove Resource Solutions, Inc.*, B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 9 n.5 (agency not required to discuss protester's high price when awardee's price was about 40 percent lower) with *Creative Info. Tech., Inc.*, B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 7 (discussions not meaningful where agency did not explain to protester that its price, which was nearly 7 times the government estimate and 4 to 9 times its competitors' prices, was unreasonable on its face). Second, in this case, a third competitive offeror proposed a significantly higher price than the protester's price, and was also considered for award. In short, the

protester has alleged no reason to believe that the agency erred in concluding that the protester's price was reasonable on these facts.<sup>4</sup>

We next turn to the protester's argument that the agency failed to perform a price realism evaluation of the awardee's low price. In order to conduct a price realism analysis in a fixed-price procurement, such as this one, an agency must provide for such an analysis in the solicitation. *Ball Aerospace & Techs. Corp.*, B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Where the solicitation does not include a price realism evaluation, an agency is not permitted to perform one. See *Crown Point Systems*, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5.

In this case, while the solicitation contemplated that the agency might perform a price realism analysis under certain circumstances, we do not agree that the solicitation required a price realism analysis. Specifically, the solicitation provided that in the event adequate price competition did not exist after receipt of proposals, the agency might request additional cost or pricing data and conduct negotiations in order to ensure a reasonable and realistic price.<sup>5</sup> RFP at 76. First, as discussed above, the agency reasonably concluded there was adequate price competition, and the solicitation provisions concerning realism were expressly conditioned on the absence of price competition. *Id.* Second, even if price competition were inadequate, the solicitation merely provides that the agency may, not must, request additional cost or pricing data and conduct negotiations to ensure realism. *Id.* In short, there was no requirement for a price realism assessment on these facts.

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<sup>4</sup> Collaterally, we note if the agency had, in fact, concluded that the protester's price was unreasonable prior to opening discussions, it is entirely possible that the protester would not have been included in the competitive range. Moreover, in a recent decision addressing an argument very similar to the one advanced by the protester, we concluded that agencies are not, as a general matter, required to assess price reasonableness prior to engaging in discussions. See *DynCorp Int'l, LLC*, B-417506, B-417506.10, July 31, 2019, 2019 CPD ¶ 338 at 10-15.

Specifically, in that decision we concluded that, while agencies are required to ensure the award of any contract is at a fair and reasonable price, there is no legal requirement for agencies to make a determination of price reasonableness during discussions or for every proposal submitted. *Id.* Furthermore, while the RFP in this case, as in *DynCorp*, provides that the agency would evaluate prices for reasonableness, the RFP does not indicate when the agency would perform that evaluation. *Id.*; RFP at 85. Therefore, while the agency could have elected to assess the protester's price for reasonableness prior to or during discussions, neither the FAR nor the solicitation required the agency to do so.

<sup>5</sup> Additionally, the solicitation also uses the term "realism" in discussing the evaluation of an offeror's small business utilization plan. See RFP at 86. However, the context makes it clear that this language is not referring to price realism, but rather to an evaluation of the offeror's technical approach to utilizing small business. *Id.*



## Incomplete Proposals

Finally, the protester argues the agency should have rejected the awardee's proposal as late because the awardee's initial proposal failed to address material requirements of the solicitation. Comments and Supp. Protest at 2-11. Because the awardee's initial proposal did not address various material solicitation requirements, AGEC argues the awardee's proposal was not simply technically unacceptable, but rather incomplete. *Id.* According to the protester, the agency could not permit Essex to cure these missing portions of its proposal through discussions because to do so would essentially allow the agency to consider a late proposal. Because the RFP incorporated by reference FAR clause 52.215-1, which requires the rejection of late proposals under certain circumstances, the agency was required to reject Essex's proposal, rather than admit Essex to the competitive range to afford Essex an opportunity to cure the missing information. *Id.*

An agency's discretion to hold discussions is quite broad, and is not generally reviewed by this Office. *Alliance Worldwide Distrib., LLC*, B-408491, Sept. 12, 2013, 2013 CPD ¶ 223 at 3. The decision to establish a competitive range and the determination whether a proposal should be included therein is principally a matter within the sound judgment of the procuring agency. *Dismas Charities, Inc.*, B-284754, May 22, 2000, 2000 CPD ¶ 84 at 3. While exclusion of technically unacceptable proposals is permissible, it is not required. *Grove Resource Solutions, Inc.*, B-296228, B-296228.2, July 1, 2005, 2005 CPD 133 at 3-4.

Here, there is no dispute that Essex submitted, prior to the time for receipt of proposals, a 148-page proposal including detailed technical, past performance, and price volumes. See AR, Tab 4, Essex's Initial Proposal *generally*. The protester's argument hinges entirely on its claims that the awardee's proposal was so deficient in certain respects that Essex's proposal revisions amounted to the late submission of a portion of its proposal. See Comments and Supp. Protest at 2-11. For example, the protester notes that the agency assigned deficiencies to Essex's technical proposal for, among other things, failing to address a required testing plan, a logistics product data candidate list, and configuration management standards. *Id.* at 6-7. We do not agree that the agency erred by permitting Essex to address these technical deficiencies through discussions.

The FAR makes clear one of the purposes of discussions is to address deficiencies and significant weaknesses in proposals. FAR 15.306(d)(3). While the agency found numerous deficiencies in Essex's initial proposal, Essex submitted a lengthy and complete--albeit technically unacceptable--initial proposal prior to the time for receipt of proposals. In this regard, we have previously concluded agencies may reasonably open discussions where initial proposals do not provide all information needed to evaluate the proposals. See, e.g., *Goldbelt Specialty Servs. LLC*, B-409713.2, Oct. 15, 2014, 2014 CPD ¶ 306 at 3. Agencies have significant discretion to select proposals for inclusion in the competitive range, and we cannot conclude Essex's proposal was late for the reasons argued here.

Moreover, the decisions on which the protester relies are inapposite. For example, in our decision in *M. Braun, Inc.*, B-298935.2, May 21, 2007, 2007 CPD ¶ 96, we sustained a protest when an agency issued a purchase order, after discussions, to a vendor that submitted a late quotation. However, in that case, unlike this one, the agency held discussions only with the late vendor on the rationale that the late vendor's quotation was the only technically acceptable quotation. *M. Braun, supra* at 3-4. Our decision concluded that the agency erred in holding discussions with the late vendor because the quotation was both late, and was not technically acceptable as submitted. *Id.* By contrast, in this case Essex submitted a timely proposal, albeit with flaws, and the agency held discussions with multiple offerors, including the protester.

As an additional example, the protester's reliance on our decision in *Panasonic Comms. & Sys. Co.*, B-239917, Oct. 10, 1990, 90-2 CPD ¶ 279 is equally misplaced. In that decision, the agency rejected an offer as late that did not include a bid sample in the initial proposal, because the solicitation's technical evaluation scheme was principally based on testing the bid sample. *Panasonic Comms. & Sys. Co., supra*. We concluded that the agency's actions were reasonable because the rejection of initial offers is proper where the initial offer is so deficient that, in essence, no meaningful offer was submitted. *Id.* In this case, Essex's timely initial proposal, while not technically acceptable, was clearly a meaningful offer.

Furthermore, even assuming for the sake of argument that the protester's theory is correct, the record reflects that the protester cannot demonstrate competitive prejudice because its own proposal had similar flaws to the awardee's proposal, and had the agency adopted the protester's reasoning, both proposals would have been rejected. Competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. See, e.g., *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3.

The record reflects that the agency assigned several deficiencies to the protester's proposal on the basis that the proposal entirely failed to address material solicitation requirements. See, e.g., AR, Tab 15a, Protester's Round One Technical Evaluation Notices at 9-11, 14-18. Additionally, the agency identified several other missing categories of mandatory information that it styled as matters needing clarifications, rather than as deficiencies; despite the label used by the agency, however, these issues involved missing information required by the solicitation. See, e.g., AR, Tab 14a, Protester's Round One Price Evaluation Notice at 1.

The protester attempts, at length, to distinguish its own deficiencies from the awardee's deficiencies on the basis that the protester's proposal, in fact, included all required information. See Supp. Comments at 4-10. The protester is correct with respect to some of those deficiencies--i.e., the protester's response to several of the evaluation notices directed the agency's attention to the relevant parts of its proposal that the agency had apparently overlooked, and the agency withdrew the relevant deficiencies. *Id.* However, contrary to the protester's contention, several of the evaluation notices

identified required material that was actually missing or incomplete in the protester's proposal.

For example, the agency assigned the protester a deficiency because its initial proposal did not address the solicitation's requirements to conduct and assist with physical configuration audits. See AR, Tab 15a, Protester's Round One Technical Evaluation Notices at 20. Although the protester disagrees, noting two passing references to the acronym "PCA," those references do not appear to refer to the physical configuration audits required by the solicitation, but rather to an unidentified manufactured component of their product.<sup>6</sup> See AR, Tab 3, Protester's Proposal at 115, 124. More significantly, the two references provide no explanation or discussion of how the protester would perform or assist in a physical configuration audit as required by the solicitation. *Id.* Accordingly, the protester's initial proposal was incomplete in this regard and so, by the protester's own reasoning, should have been rejected as incomplete or late.

As another example, the agency's evaluation notices noted that the protester's proposal did not include a mandatory data rights assertion list in response to Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.227-7017. AR, Tab 14a, Protester's Round One Price Evaluation Notice at 1. While the agency styled this as a clarification rather than a deficiency, the submission was required<sup>7</sup> and the protester's proposal omitted it entirely. *Id.* Again, the protester's initial proposal was incomplete in this respect.

Accordingly, even if the protester were correct that the agency was obliged to reject initial proposals that omitted responses to some of the solicitation's material

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<sup>6</sup> For example, the protester's initial proposal included a section describing its manufacturing plan which noted, in relevant part: "major component modules will include the trailer; the combined transformer rectifiers; PCA's and the body panel and sheet-metal kit; and cable assemblies. These items therefore will be manufactured outside of AGECE's Franklin, OH facility and brought in essentially complete." AR, Tab 3, Protester's Proposal at 115. The acronym PCA is not defined in the proposal, but the context strongly suggests that "PCA" refers to a manufactured physical component of the generator and not a physical configuration audit. *Id.* The only other reference to "PCA" in the technical proposal is in the small business utilization plan, where the proposal indicates that a specific small business will be the "contract manufacturer" responsible for "populat[ing]" the protester's PCAs, which reinforces that the acronym is likely not referring to an audit. *Id.* at 124.

<sup>7</sup> The relevant DFARS clause specifically notes that an offeror's failure to submit, complete, or sign the notification and identification required by the clause with its offer may render the offer ineligible for award. DFARS clause 252.227-7017(e).

requirements, the protester cannot demonstrate that it was competitively prejudiced because the protester's initial proposal was also materially incomplete.

The protest is denied.

Thomas H. Armstrong  
General Counsel