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Comptroller General
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Decision

Matter of: SupplyCore, Inc.

File: B-418337.2; B-418337.3

Date: September 2, 2021

William E. Hughes, Esq., Julia Banegas, Esq., and Maya A. Desai, Esq., Husch Blackwell LLP, for the protester.
Gary J. Campbell, Esq., G. Matthew Koehl, Esq., and Lidiya Kurin, Esq., Womble Bond Dickinson (US) LLP, for Noble Supply & Logistics, and David Z. Bodenheimer, Esq., Andrew Victor, Esq., and Samuel Van Kopp, Esq., Nichols Liu LLP, for PAE-IMK International, LLC , the intervenors.
Andrew T. McGuire, Esq., Defense Logistics Agency, for the agency.
Jacob M. Talcott, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging adequacy of agency's discussions are denied where agency informed protester on three separate occasions to improve its price, and identified the specific areas in need of improvement.

DECISION

SupplyCore, Inc., of Rockford, Illinois, protests the award of two contracts under request for proposals (RFP) No. SPE8E3-19-R-0001, issued by the Defense Logistics Agency (DLA), for the agency's maintenance, repair, and operations (MRO) Tailored Logistics Support Prime Vendor (TLS PV) program for the Pacific region. SupplyCore challenges awards to Noble Supply & Logistics, of Rockland, Massachusetts and PAE-IMK International, LLC, of Arlington, Virginia. SupplyCore argues that both award decisions were flawed because the agency failed to conduct meaningful price discussions with it.

We deny the protests.

BACKGROUND

On August 27, 2019, DLA Troop Support issued the RFP under the agency's MRO TLS PV program for the Pacific region. Agency Report (AR) at 2. The MRO TLS PV program consists of indefinite-delivery, indefinite-quantity (IDIQ) contracts awarded by zone. *Id.* The awardees are responsible for supplying a wide range of commercial, maintenance, repair, and operations supplies and incidental services to authorized DLA customers in their respective zones.[1] *Id.* The RFP divided the Pacific region into two zones: zone one consists of Japan, Okinawa, Singapore, Diego Garcia, the Philippines, and Thailand. AR, Tab 1, RFP attach. A at 6. Zone two consists of the Republic of Korea (South Korea). *Id.* The zone one award was made to Noble and the zone two award was made to PAE-IMK.

The RFP contemplated award of IDIQ contracts for a base period of two years and up to two option periods of eighteen months. *Id.* at 4. The solicitation provided for the evaluation of proposals based on price and two non-price factors, technical merit and past performance confidence assessment, with the first non-price factor more important than the second. *Id.* at 83. The solicitation anticipated award on a best-value tradeoff basis with the non-price factors, when combined, considered significantly more important than price. *Id.* at 84. The closing date for receipt of proposals, as amended, was December 10, 2019. AR, Tab 6, amend. 0005 at 1.

The technical merit factor consisted of the following three equally-weighted subfactors: product sourcing, distribution and delivery, and customer support. RFP attach. A at 83. The solicitation advised offerors that the agency would assign each subfactor a rating of outstanding, good, acceptable, marginal, or unacceptable under the technical merit factor. *Id.*

Under the past performance factor, the solicitation advised that the agency would evaluate the relevancy of the past performance submission, and assign a rating of very relevant, relevant, somewhat relevant, or not relevant. *Id.* The agency would then evaluate the quality of the past performance submission and assign a rating of outstanding, good, acceptable, marginal, unacceptable, or neutral. *Id.* Finally, the agency would make an overall performance assessment, wherein it would combine the assessments of relevancy, quality, and recency of the past performance submissions, and assign a rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or neutral confidence. *Id.*

For the price proposal, the solicitation advised offerors to include the following elements: fixed ceiling prices for items on the price evaluation list (PEL), for the two year base period and each eighteen-month option period; fixed ceiling prices for distribution for twenty-two pricing tiers across a drop ship distribution[2] fee matrix; a

[1] Items to be furnished include, for example, heating, ventilation, and air conditioning supplies; plumbing supplies; and electrical products. *Id.*

[2] Drop shipment is defined as delivery of material by a supplier of the prime vendor directly to the customer. *Id.* at 19.

vendor-supported distribution[3] fee matrix for each of the three pricing periods; a total acquisition price for an incidental service scenario; and burdened labor rates for a storefront scenario. *Id.* at 4-5. The solicitation provided that an offeror's total evaluated price (TEP) would be calculated as follows:

> Aggregate acquisition price of commonly-offered PEL items and acceptable alternates[4] (drop ship and non-drop ship) plus aggregate distribution price (drop ship) plus aggregate distribution price (prime vendor) plus incidental service scenario plus aggregate storefront price

Id. at 89.

Evaluation Results for Zone One

With respect to the solicitation for zone one, the agency received three proposals by the solicitation closing date, including offers from Noble and SupplyCore; all three proposals were included in the competitive range. AR, Tab 13, Zone One Price Negotiation Memorandum (Zone One PNM) at 1-2.[5] Prior to discussions, the agency developed minimum and maximum price objectives at the line-item level for all price elements (*i.e.*, for each individual PEL item, each distribution fee tier, the service scenario, and the storefront scenario) based on a comparison of the offers received, as well as commercial, government, and historical pricing. AR at 15; AR, Tab 14, Final Price Analysis at 4-10. The agency then aggregated the line-item minimum and maximum price objectives to come up with minimum and maximum price objectives for each price element and for the procurement overall. *Id.* The maximum price objective for zone one was [DELETED]. AR, Tab 13, Zone One PNM at 10.

The initial price submissions of the three offerors were as follows:

	Noble	**SupplyCore**	**Offeror 3**

[3] Vendor-supported delivery is defined as the process whereby material is shipped from one or more suppliers to the prime vendor, and then the prime vendor independently ships from its location to the government customer's location. *Id*. at 19.

[4] Commonly offered PEL items and acceptable alternates are the line items on the PEL for which all offerors submitted either a price for the PEL line or an acceptable alternate. *Id.* at 89.

[5] The agency submitted separate reports for the two protests; citations to the AR in this section reference the report for B-418337.2, whereas citations in the next section (*i.e.*, to the zone two evaluation results) reference the report for B-418337.3.

PEL (Drop Ship and Non-Drop Ship)	[DELETED]	[DELETED]	[DELETED]
Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]
Non-Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]
Incidental Service Scenario	[DELETED]	[DELETED]	[DELETED]
Storefront Scenario	[DELETED]	[DELETED]	[DELETED]
TOTAL EVALUATED PRICE	$38,324,366	$77,879,454	$41,878,598

Id. at 4. The agency conducted three rounds of discussions with each offeror in the competitive range prior to requesting final proposal revisions. *Id.* at 11-12. During each round of discussions, the agency asked SupplyCore, to improve its pricing on a long list of items, specifically identified by item number. The agency explains that it requested improved pricing on all line items that exceeded the agency's maximum price objective. AR at 15.

The agency closed discussions on February 10; final proposal revisions were due that same day. AR, Tab 13, Zone One PNM at 12. The Source Selection Evaluation Board conducted its evaluation of the final proposals and assigned the following ratings:

	Noble	SupplyCore	Offeror 3
TECHNICAL MERIT	GOOD	GOOD	ACCEPTABLE
Product Sourcing	Good	Good	Good
Distribution and Delivery	Good	Good	Acceptable
Customer Support	Acceptable	Acceptable	Acceptable
PAST PERFORMANCE CONFIDENCE ASSESSMENT	SATISFACTORY CONFIDENCE	SUBSTANTIAL CONFIDENCE	SATISFACTORY CONFIDENCE

Id. at 3.

The agency completed its pricing analysis on February 19. The final, revised price submissions were as follows:

	Noble	SupplyCore	Offeror 3
PEL (Drop Ship and Non-Drop Ship)	[DELETED]	[DELETED]	[DELETED]
Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]
Non-Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]
Incidental Service Scenario	[DELETED]	[DELETED]	[DELETED]
Storefront Scenario	[DELETED]	[DELETED]	[DELETED]
TOTAL EVALUATED PRICE	$16,215,312	$66,376,552	$26,723,655

Id. at 5. The agency determined that Noble's proposal represented the best value to the government for zone one, and on May 13, awarded Noble a contract. AR, Tab 20, Source Selection Decision Document at 1, 29; Tab 21, Unsuccessful Offeror Notice at 1.

Evaluation Results for Zone Two

With respect to the solicitation for zone two, the agency received five proposals by the solicitation closing date, including offers from PAE-IMK and SupplyCore; all five proposals were included in the competitive range. AR, Tab 13, Zone Two PNM at 1-2. As with the zone one procurement, the agency developed minimum and maximum price objectives at the line-item level for all price elements prior to discussions. The agency then aggregated the line-item minimum and maximum price objectives to produce minimum and maximum price objectives for each price element and for the procurement overall. AR, Tab 14, Final Price Analysis at 4-10. The maximum price objective for zone two was [DELETED]. AR. Tab 13, Zone Two PNM at 10.

The initial price submissions of the five offerors were as follows:

	PAE-IMK	SupplyCore	Offeror 3	Offeror 4	Offeror 5
PEL (Drop Ship)	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
PEL (Non-Drop Ship)	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Non-Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Incidental Service Scenario	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Storefront Scenario	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
TEP	$19,529,936	$62,755,147	$24,551,463	$37,586,120	$60,809,367

Id. at 5. The agency conducted three rounds of discussions with each offeror in the competitive range prior to requesting final proposal revisions. *Id.* at 11-12. During each round of discussions, the agency asked SupplyCore, to improve its pricing on a long list of items, specifically identified by item number. The agency explains that it requested improved pricing on all line items that exceeded the agency's maximum price objective. AR at 15.

The agency closed discussions on February 26, 2021; final proposal revisions were due that same day. AR, Tab 13, Zone Two PNM at 12-13. The Source Selection Evaluation Board conducted its evaluation of the final proposals and assigned the following ratings:

	PAE-IMK	SupplyCore
TECHNICAL MERIT	GOOD	GOOD
Product Sourcing	Good	Good
Distribution and Delivery	Good	Good
Customer Support	Acceptable	Acceptable
PAST PERFORMANCE CONFIDENCE ASSESSMENT	SATISFACTORY CONFIDENCE	SUBSTANTIAL CONFIDENCE

Id. at 3.

The agency completed its pricing analysis on March 3. The final, revised price submissions were as follows:

	PAE-IMK	SupplyCore	Offeror 3	Offeror 4	Offeror 5
PEL (Drop Ship)	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
PEL (Non-Drop Ship)	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Non-Drop Ship Distribution Fee	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Incidental Service Scenario	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
Storefront Scenario	[DELETED]	[DELETED]	[DELETED]	[DELETED]	[DELETED]
TEP	$17,297,759	$50,425,423	$15,837,080	$12,323,206	$54,567,832

*Id.*at 5.

The agency determined PAE-IMK's proposal represented the best value to the government for zone two and awarded it a contract on May 13. AR, Tab 20, Source Selection Decision Document at 1, 41; Tab 21, Unsuccessful Offeror Notice at 1.

SupplyCore requested a written debriefing on May 14, which the agency began on May 19 and concluded on May 28. AR at 23-24. Following the debriefing, SupplyCore timely filed a protest of each award with our Office.

DISCUSSION

SupplyCore argues, with respect to both of these procurements, that the agency failed to conduct meaningful discussions with it. Specifically, SupplyCore argues that being told to "improve its price" was insufficient to alert it that its TEP for each zone--and its distribution fees, in particular--exceeded the Government's maximum objectives. Comments at 1-4. For reasons discussed below, we deny the protest.

When an agency engages in discussions with an offeror, the discussions must be meaningful. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 6. The Federal Acquisition Regulation (FAR) requires agencies conducting discussions with offerors to address, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR 15.306(d)(3). Further, "[t]he contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award." *Id.* The contracting officer is not required, however, to "spoon-feed" an offeror, or discuss every area where the proposal could be improved. *CEdge Software Consultants, LLC*, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 6; FAR 15.306(d)(3). Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *InfoPro, Inc.,supra*, at 9. With regard to the adequacy of discussions of price, an agency generally does not have an obligation to tell an offeror that its price is high, relative to other offers, unless the government believes the price is unreasonable. *State Mgmt. Servs., Inc.; Madison Servs., Inc.*, B-255528.6 *et al.*, Jan. 18, 1995, 95-1 CPD ¶ 25 at 5-6.

Here, SupplyCore alleges the agency was required to disclose that SupplyCore's price exceeded the agency's maximum objective. Comments at 1-2. In support of this contention, SupplyCore cites *Creative Info. Tech., Inc*., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110, which it argues imposes upon the agency "the obligation to convey the magnitude of price discrepancies" during discussions. Protest at 5. We disagree.

In *Creative Info. Tech., Inc.* (*CITI*), we sustained a protest that alleged the agency failed to conduct meaningful discussions after it told the protester only that its price was "overstated" during discussions. *CITI*, *supra* at 7. Several facts distinguish that protest from the protest here. In *CITI*, the protester's initial price was more than eight times higher than the government estimate; SupplyCore's price was around only two times higher than the agency's maximum objective for zone one and about three times higher than the maximum objective for zone two. Additionally, in *CITI*, the protester's price was more than double the price of any other proposal included in the competitive range, whereas SupplyCore's price for zone two was similar to that of another offeror in the competitive range (*i.e.*, Offeror 5).

Moreover, the underlying cause of the price disparity in *CITI* stemmed from the protester's misconception of the solicitation's requirements. *CITI*, *supra* at 8-9. There, the protester's initial price was drastically higher than the government estimate because it proposed 37 full-time employees, whereas the government estimate called for only 7 full-time employees. *Id.* at 1. By characterizing the issue as one of price, the agency in *CITI* failed to meaningfully convey the true problem with the protester's proposal, namely that the protester had a fundamental misunderstanding of the requirements of the RFP. *Id.* at 8-9.

Unlike in *CITI*, the record here does not suggest, and SupplyCore does not contend, that it misunderstood the requirements of the RFP. The record also does not support SupplyCore's contention that its price was unreasonable, particularly because it did not result in the exclusion of the protester's proposal from the competitive range or from consideration by the source selection authority in her best value tradeoff determination for either zone.

As noted above, agencies have broad discretion in conducting discussions, and are not required to tell an offeror its price is too high unless the agency determines that price is unreasonable. *State Mgmt. Servs., Inc.; Madison Servs., Inc.*, *supra* at 5-6. Here, the agency did not determine that the protester's price was unreasonable, yet it still advised SupplyCore to improve its price on three separate occasions. AR at 24.

With respect to zone one, during the first round of discussions, the agency advised SupplyCore to improve its price for over 340 drop ship PEL line items, over 350 non-drop ship PEL line items, all 22 drop-ship distribution fee tiers, all 22 non-drop ship distribution fee tiers, the incidental services scenario, and all pricing periods for the storefront scenario. AR, Tab 13, Zone One PNM 42-43. In the second round of discussions, the agency advised SupplyCore to improve its price for over 110 drop ship PEL line items, over 200 non-drop ship PEL line items, all 22 drop-ship distribution fee tiers, all 22 non-drop ship distribution fee tiers, the incidental services scenario, and all pricing periods for the storefront scenario. *Id.* at 51-53. In the third round of discussions, the agency advised SupplyCore to improve its pricing in the same areas. *Id.* at 54-56.

With respect to zone two, during the first round of discussions, the agency advised SupplyCore to improve its price for over 380 drop ship PEL line items, over 370 non-drop ship PEL line items, all 22 drop-ship distribution fee tiers, all 22 non-drop ship distribution fee tiers, the incidental services scenario, and all pricing periods for the storefront scenario. AR, Tab 13, Zone Two PNM 65-68. In the second round of discussions, the agency advised SupplyCore to improve its price for 100 drop ship PEL line items, over 210 non-drop ship PEL line items, all 22 drop-ship distribution fee tiers, all 22 non-drop ship distribution fee tiers, the incidental services scenario, and all pricing periods for the storefront scenario. *Id.* at 74-77. In the third round of discussions, the agency advised SupplyCore to improve its pricing in many of the same areas. *Id.* at 79-80.

SupplyCore's contention in both of these protests that the agency needed to go further and inform SupplyCore that its TEP and distribution fees exceeded the agency's maximum objective, despite advising SupplyCore on three separate occasions of the specific pricing areas it needed to improve, is supported by neither our precedent nor the record here.

The protests are denied.

Edda Emmanuelli Perez
General Counsel