

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Trilogy Federal, LLC

File: B-418461.11; B-418461.18

Date: February 23, 2021

Kelsey Hayes, Esq., Terry L. Elling, Esq., and Hillary J. Freund, Esq., Holland & Knight LLP, for the protester.

Frank V. DiNicola, Esq., Tara Nash, Esq., Desiree A. DiCorcia, Esq., and Tobias Hunziker, Esq., Department of Veterans Affairs, for the agency.

Lois Hanshaw, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging various errors in agency's evaluation of protester's proposal is denied where protester has failed to demonstrate that agency's evaluation was unreasonable or inconsistent with the solicitation.

DECISION

Trilogy Federal, LLC (Trilogy), a service-disabled veteran-owned small business (SDVOSB) of Arlington, Virginia, protests the elimination of its proposal from the competition by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. 36C10B19R0046 for professional and information technology (IT) services. Trilogy argues that the agency unreasonably eliminated its proposal, contending that the agency's evaluation of Trilogy's proposal and competitive range determination were flawed.

We deny the protest.

BACKGROUND

The procurement at issue is commonly referred to as the Transformation Twenty-One Total Technology Next Generation procurement (or T4NG). Contracting Officer's Statement (COS) at 1. With a program ceiling of \$22.3 billion, the T4NG contract is a multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract that provides professional and IT services for the VA. Agency Report (AR), Tab 5, T4NG On-Ramp RFP at 7. T4NG delivers contractor provided solutions in support of IT, health IT, and telecommunications, to include services and incidental hardware/software, for customer

requirements that vary across the entire spectrum of existing and future technical environments. *Id.* at 12; COS at 1.

Currently, there are 28 prime vendors that hold the T4NG contract: 12 large businesses and 16 SDVOSBs. COS at 1. Relevant here, the T4NG contract includes “on-ramp” procedures--*i.e.*, a process for adding additional vendors to the contract--for SDVOSB, veteran-owned small business, and small business contractors. RFP at 77. The RFP specified that the on-ramp procedures could be implemented at any time by reopening the competition and utilizing the same terms and conditions of the T4NG contract. *Id.*

On November 12, 2019, the VA issued the T4NG on-ramp solicitation, which contemplated the award of individual task orders on a performance-based time-and-material, cost-reimbursement, and fixed-price basis for a period of approximately 5-years. *Id.* at 16. This solicitation, issued to replenish the pool of SDVOSB contractors for the T4NG contract, stated that the agency intended to award seven contracts to SDVOSBs. *Id.* at 132; COS at 1.

The solicitation provided that the agency would make award to the SDVOSBs whose proposals represented the best value, considering the following factors, listed in decreasing level of importance: technical, past performance, veterans employment, small business participation commitment (SBPC), and price. RFP at 133.

The technical factor was comprised of two subfactors, sample task and management. The sample task subfactor, consisted of sample tasks 1 and 2, which were of equal importance.¹ *Id.* Under the technical factor, the sample task subfactor was significantly more important than the management subfactor. *Id.* Overall, the technical factor was significantly more important than the past performance factor, with past performance and all subsequent factors each slightly more important than the following factor. *Id.* All non-price factors, when combined, were significantly more important than price. *Id.*

Under each technical factor and subfactor, and under the SBPC factor, proposals would receive an adjectival rating of outstanding, good, acceptable, susceptible to being made acceptable, or unacceptable. AR, Tab 4, Source Selection Evaluation Plan at 23. Under the past performance factor, each proposal would receive an adjectival risk assessment. *Id.* at 23-24. Pertinent to this protest, the solicitation advised that offerors were responsible for including sufficient details, in a concise manner, to permit a complete and accurate evaluation of each proposal. RFP at 122.

The solicitation established that the technical evaluation was comprised of two steps, which the solicitation termed step one and step two. *Id.* at 132. In step one, offerors

¹ Sample task 1 asked offerors to explain how they would analyze, report, prioritize, remediate, and track VA’s infrastructure and IT components in anticipation of a new electronic health records (EHR) system. RFP at 203. Sample task 2 asked offerors for their plan to build an online form submission application. *Id.* at 209.

were required to submit a proposal that included three parts: a response to sample task 1, a price volume, and a volume of certifications and representations. *Id.* After the evaluation of step one proposals, the agency would establish a competitive range. *Id.* The step one evaluations of an offeror's sample task 1 and price were carried forward to the step two evaluation and would not be reevaluated. *Id.*

In step two, the agency would evaluate an offeror's response to sample task 2 and finalize the adjectival rating for the sample task subfactor. *Id.* at 133. Broadly, the sample task evaluation would assess the extent to which an offeror demonstrated an understanding of all facets of the problem and whether its proposed solution provided the agency with a high level of confidence in successful project completion. *Id.* at 134.

The VA would also evaluate the management subfactor, the technical factor, the past performance factor, the veterans employment factor, and the SBPC factor. *Id.* As to the price evaluation, the agency would conduct a price realism evaluation by examining an offeror's labor rates to assess performance risk, but would not adjust an offeror's overall price. *Id.* at 136.

Regarding the sample tasks, the solicitation stated that these tasks were designed to test the offeror's expertise and innovative capabilities to respond to the types of situations that may be encountered in contract performance. *Id.* at 134. Importantly, the solicitation provided that because the sample tasks were "designed to test the Offeror's expertise and innovative capabilities to respond to the types of situations that may be encountered in [contract] performance," even if the agency entered into discussions, offerors would "not be given an opportunity to correct or revise a Sample Task response." *Id.*

In evaluating the offeror's response to a sample task, the RFP stated that it would consider the extent that the response demonstrated its understanding of all of the features involved in solving the problems presented, and meeting the requirements, including identifying uncertainties and proposing resolutions to address them. *Id.* The response was also evaluated for its feasibility of approach, which encompassed considering whether the offeror's methods and approach to the sample task requirements provided the agency with a high degree of confidence of successful completion. *Id.*

The agency evaluated 94 step one proposals.² COS at 3. The agency established a competitive range of 33 of the highest rated proposals, including Trilogy, and held discussions with those offerors. AR, Tab 10, T4NG On-Ramp Competitive Range Determination Memorandum at 3. Step two proposals, which included sample task 2, were requested and received from the offerors in the competitive range, including Trilogy. *Id.* The agency assigned Trilogy's proposal a rating of acceptable for the

² The agency received 98 step one proposals, however, three were untimely and therefore immediately eliminated, and one offeror withdrew its proposal. COS at 3 n.1.

technical factor and sample task subfactor, and a rating of acceptable for the management subfactor.³ *Id.* at 4. The agency also assigned the protester's proposal a rating of low risk for the past performance factor, recognized the firm's commitment that 10 percent of Trilogy's workforce would include veterans under the veterans employment factor, and assessed Trilogy's proposal a rating of good under the SBPC factor. *Id.* Trilogy's proposal included a proposed price of \$7,070,703,559. *Id.*

The Source Selection Authority (SSA) determined that Trilogy's proposal was not among the highest-rated proposals, and eliminated it from the second competitive range. *Id.* at 6; AR, Tab 11, Unsuccessful Offeror Letter at 1. In making her decision, the SSA explained that she decided to exclude from the step 2 competitive range all proposals with a rating of acceptable under the technical factor. AR, Tab 10, T4NG On-Ramp Competitive Range Determination Memorandum at 5. All of the proposals eliminated also received a rating of acceptable under the sample task subfactor. *Id.*

In selecting the proposals to be included in the step two competitive range, the SSA recognized that the solicitation did not permit revisions of sample task responses through discussions, and thus an offeror's rating under the sample task subfactor could not be improved. *Id.* The SSA further noted that none of the excluded proposals had issues requiring remediation under the management sub-factor. *Id.* As a result, the technical factor adjectival rating for the excluded proposals would not improve after step two competitive range discussions. *Id.*

The SSA then considered the evaluations under the less important evaluation factors and concluded that "none of these differences [in the veterans employment and SBPC factors or in price] were significant enough to outweigh the 'Good' or better ratings received for the Technical Factor, the significantly most important factor, especially considering the equal ratings for Past Performance, the second most important factor." *Id.* Finally, the SSA noted that the range of price proposals in the step two competitive range was considerably narrower than in the step one competitive range. *Id.*

The SSA also inquired whether proposals with ratings of good or outstanding under the technical factor also had low ratings under the veterans employment or SBPC factors, or proposed a price so high that the low rating or high price would be sufficient to exclude that proposal from the competitive range. *Id.* at 6. Inversely, the SSA also considered whether the proposals with a rating of acceptable under the technical factor

³ A rating of acceptable would be assigned to a proposal that met all of the government's requirements, contained at least minimal detail, demonstrated at least a minimal understanding of the problems, and was at least minimally feasible (moderate to high degree of risk). AR, Tab 4, Source Selection Evaluation Plan at 23. A rating of good would be assigned to a proposal that met or exceeded all of the government's requirements, contained at least adequate detail, demonstrated at least an understanding of the problems, and was at least feasible (low to moderate degree of risk). *Id.*

nevertheless had strengths under the veterans employment or SBPC factors, or proposed a price so low, that this benefit would outweigh the lower rating under the technical factor. *Id.* at 5-6. The SSA concluded that none of the ratings or the relative prices provided a basis to change the competitive range. *Id.* at 6. After receiving a debriefing, Trilogy protested to our Office.

DISCUSSION

Trilogy raises various challenges to the evaluation of its proposal under the technical factor and contends that the agency's price realism evaluation was unreasonable.⁴ The protester also contests the reasonableness of the agency's competitive range determination. We have fully considered all of Trilogy's protest grounds, and although we address only a portion of the arguments below, we find that none provide a basis to sustain the protest.

Technical Evaluation

The protester challenges the agency's evaluation of Trilogy's proposal under the sample task subfactor, including Trilogy's responses to sample tasks 1 and 2, and the management subfactor. The protester also contends that the agency disparately evaluated the management subfactor. We find no basis to sustain these allegations.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. *Gonzales Consulting Services, Inc.*, B-416676, B-416676.2, Nov. 20, 2018, 2018 CPD ¶ 396 at 7. An offeror has the burden of submitting an adequately written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. *Hawk Institute for Space Sciences*, B-409624, June 20, 2014, 2014 CPD ¶ 200 at 3. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Id.*

The protester argues that the agency's evaluation of the protester's proposal under the sample task subfactor was unreasonable and the agency erred in assessing weaknesses against Trilogy's responses to sample tasks 1 and 2. After reviewing Trilogy's numerous allegations, we find no merit to the protester's challenges.

For example, Trilogy contests the agency's conclusion that the protester's proposal excluded essential resources such as a Network Engineer, HVAC (Heating Ventilation

⁴ The protester initially argued that the agency improperly used unstated evaluation criteria in evaluating its response to the sample task 1, but withdrew this allegation in its comments. See Comments and Supp. Protest at 2 n. 2. Accordingly, we do not further address this allegation.

and Air Conditioning) Engineer, Construction Engineer, and Telecommunications Engineer. Protest at 20 (citing AR, Tab 8 Technical Factor Report at 9). The protester cites to page 17 of its proposal and contends that it named essential personnel proposed to support sample task 1. Protest at 20 (citing AR, Tab 7, Sample Task 1 Response at 17).

In response, the agency explains that in evaluating Trilogy's proposal, the agency credited the proposal with some identified staff, including a project manager, but declined to recognize some of the other identified individuals. In this regard, the agency asserts that page 17 of Trilogy's proposal included a chart that identified Johannes Gutenberg and Nikola Tesla--*i.e.*, two influential but long deceased inventors--as parties responsible for certain requirements.⁵ Memorandum of Law (MOL) at 25 (citing AR, Tab 7, Sample Task 1 Response at 17). The agency explains that it declined to seriously consider these individuals as staff proposed to support this requirement and maintains that it reasonably assessed a weakness finding that the protester demonstrated a minimal understanding of essential personnel required to analyze and remediate a VA's facility infrastructure deficiencies. MOL at 25.

Here, the record shows that page 17 of the protester's proposal only identified responsible personnel for some, but not all of the required tasks. AR, Tab 7, Sample Task 1 Response at 17. That is, while some of the identified parties appear to be individuals that could support the requirement, the protester's proposal also included Johannes Gutenberg and Nikola Tesla as individuals responsible for end user devices and facilities, respectively. *Id.* In this regard, we find no basis to challenge the agency's conclusion that the protester did not adequately identify essential personnel. Thus, based on our review of the record, we find that Trilogy's challenge represents general disagreement that fails to provide a basis to disturb the agency's evaluation.

The protester also contends that the agency treated offerors disparately in evaluation of the management subfactor. Comments and Supp. Protest at 22. Specifically, the protester asserts that the solicitation required offerors to certify that its sample task response was solely the work of firms with which the offeror had a Contractor Team Arrangement (CTA). *Id.* (citing RFP at 125). The protester contends that despite complying with the CTA requirement, it was unfairly excluded from the competitive range, while two offerors that failed to comply with the CTA requirement were included in the competitive range. *Id.* at 24. Trilogy contends that the agency should have assigned these two offerors deficiencies for their failure to include CTAs, or otherwise rendered these offerors ineligible for award. *Id.*

⁵ Johannes Gutenberg, a printer, and publisher who invented the printing press, died in 1468. <https://www.britannica.com/biography/Johannes-Gutenberg> (last visited Feb. 18, 2021). Nikola Tesla, an engineer who invented the Tesla coil--an induction coil widely used in radio technology--died in 1943. <https://www.britannica.com/biography/Nikola-Tesla> (last visited Feb. 18, 2021).

We disagree. While the solicitation did require CTA certification, the plain language of the RFP states that a contractor that failed to meet the CTA certification requirement “may be assessed with a deficiency that may render an [o]fferor ineligible for award.” RFP at 125. In our view, the solicitation permitted, rather than required, an agency to eliminate an offeror that failed to meet the CTA requirement. *Technology Mgmt. Co., Inc.*, B-409976, Sept. 26, 2014, 2014 CPD ¶ 294 at 3-4 (explaining that it is within the agency’s discretion to reject a proposal where the RFP advised that an offeror “may have its proposal rejected” if its proposal lacks certain items). Accordingly, we find no merit to the protester’s argument that if these offerors failed to comply with the CTA requirement, they were required to be eliminated.

In any event, the record demonstrates that the protester’s allegation of disparate treatment is not supported by the record. First, the record shows that the agency concluded that one of the offerors in question included the CTAs as required. AR, Tab 18, Offeror 56 Management Subfactor Evaluation at 18. The record further shows that the agency found that the other offeror provided CTAs for its major subcontractors, but failed to provide CTAs for non-major subcontractors. AR, Tab 17, Offeror 23 Management Subfactor Evaluation at 20. Here, the agency chose to assess a weakness for this omission, rather than eliminate the offeror from the competition. Thus, although the protester contends that it complied with the CTA requirement and the other two offerors did not, this assertion is not borne out by the record. Additionally, given that the solicitation language did not require the assignment of a deficiency or elimination of a proposal if the CTA requirement was not met, we find the agency’s actions to be reasonable. On these facts, we find the agency’s evaluation unobjectionable.

Price Realism

Next, the protester asserts that the agency’s price realism evaluation was unreasonable. Specifically, the protester contends that the agency failed to adequately analyze the offerors’ proposed costs and prices in light of their proposed technical approaches and abilities to perform the requirements of the performance work statement (PWS). Comments and Supp. Protest at 28. The protester also challenges the agency’s use of an outlier analysis, as a basis for the agency’s price analysis. *Id.* at 29.

In response, the agency maintains that its price realism evaluation was reasonable. The agency first asserts that because the solicitation provided the labor categories and hours, the agency was not required to consider an offeror’s technical approach. Supp. MOL at 16.

Additionally, the agency avers that its use of an outlier analysis was also reasonable. *Id.* at 12. The agency explains that to conduct this assessment, the agency employed a

statistical analysis known as the “Tukey Method”⁶ to determine outlier pricing and a realistic pricing range. *Id.* at 13 (citing AR, Tab 16, T4NG Pricing Methodology at 3). The agency used the Tukey method for each offerors’ labor rates, as well as the labor rates on the T4NG IDIQ contract, to calculate an interquartile range by which outlier pricing could be identified. AR, Tab 16, T4NG Pricing Methodology at 2. As applied by the agency here, each proposed rate that fell below the current T4NG basic IDIQ contract minimum rates but above Tukey’s threshold was further analyzed to determine what percentage the proposed rate was lower than the minimum contract rate for the IDIQ and whether the proposed rate was in line with competition to determine if it was realistic. *Id.* at 2-3. The agency also considered and determined that proposed rates that fell below the T4NG basic IDIQ contract minimum rates, but above the Tukey threshold, were consistent with competitive pricing. *Id.* at 3. In instances where the proposed labor rate fell within the range of labor rates on the current T4NG IDIQ contract, those rates were viewed as realistic based upon the performance history of the ongoing contract without relying on the Tukey method. *Id.* at 2 n.1. Based on these considerations, the agency asserts that its price evaluation was reasonable and adequately documented. Supp. MOL at 15.

Where the award of a fixed-price contract or task order is contemplated, price realism is not ordinarily considered, since a fixed-priced contract or task order places the risk and responsibility for costs and resulting profit or loss on the contractor. However, an agency may, as it did here, provide in the solicitation for a price realism analysis for such purposes as measuring a firm’s understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide goods or services at little or no profit. *See STG, Inc., B-405101.3 et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 10. The depth of an agency’s realism analysis is a matter within the sound exercise of the agency’s discretion, which we will review only to determine whether it was reasonable and consistent with the terms of the solicitation. *Equa Sols., Inc., B-409848.2, B-409848.3*, Nov. 20, 2014, 2014 CPD ¶ 354 at 8.

Here, the RFP provided that total evaluated price will be derived by adding the total proposed labor rates, total materials/other direct costs, and total travel costs for the 5-year period for each labor category. RFP at 135. The agency would evaluate each proposed labor rate to determine whether it was unrealistically low in order to measure performance risk, and the agency would not accept any unrealistically low labor rates on the contract. *Id.* at 136. Further, the RFP advised that the estimated

⁶ The Tukey method for lower outliers says that in order for a labor rate to be an outlier, it would need to be less than 1.5 times the interquartile range (IQR) below the first quartile (Q1) of the data being analyzed where the IQR is equal to the difference between the third quartile (Q3) and Q1. AR, Tab 16, T4NG Pricing Methodology at 2. In other words, a lower outlier is defined as a data point that is less than Q1 minus 1.5 multiplied by IQR within a dataset. *Id.* If a proposed labor rate fell below the lower fence as determined by using Tukey’s method, it may be considered unrealistically low based on the pool of offerors that submitted a proposal. *Id.*

labor hours included in the solicitation were for evaluation purposes only and did not obligate the agency to award such labor hours. *Id.* at 124. Additionally, the RFP required that each labor category specified by the agency in the solicitation must be addressed. *Id.*

We find no basis to sustain Trilogy's challenge to the agency's price realism analysis. First, given that the solicitation provided labor categories and hours for offerors, we conclude that the agency's realism analysis was not flawed. Where, as here, a solicitation includes the labor categories, and hours that offerors are required to use to prepare their proposals, the agency may reasonably perform its price realism analysis by determining if the proposed rates are realistic without additional analysis. *ACTA, LLC*, B-418352, B-418352.2, Mar. 17, 2020, 2020 CPD ¶ 107 at 6. Therefore, we deny this aspect of the protester's challenge, notwithstanding the fact that the agency did not consider offerors' technical approaches in its price realism analysis.

In addition, we find the agency's use of the Tukey method unobjectionable under the circumstances here. In this regard, we note that the Federal Acquisition Regulation (FAR) identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including analysis of pricing information provided by the offeror and historical prices. FAR 15.404-1(b)(2). Thus, the agency's use of the Tukey methodology to compare offeror's labor rates against the historical labor rates for the T4NG IDIQ contract is a price analysis technique contemplated by the FAR.

In our view, the agency's use of the Tukey methodology reasonably identified that no offerors provided unrealistic rates. AR, Tab 8, Price Report at 4. The record shows that in using the Tukey methodology, the agency ensured that the data set for the outlier analysis, *i.e.*, all rates proposed in response to the solicitation, included enough realistic data points to be able to account for the possibility that a low rate, for example \$5, might not be identified as an outlier if all offerors proposed the same low rate. AR, Tab 16, T4NG Pricing Methodology at 2 n.2. In other words, the agency ensured that labor rates were found realistic because they were competitive and above the T4NG IDIQ rates, not because all offerors identified a similar rate. In this respect, the record shows that the agency's outlier analysis found that 97% of proposed rates were above T4NG contract minimum rates and that 3% of rates found to be below the IDIQ rates were still competitive. *Id.* Based on this analysis, we conclude that the agency reasonably concluded that no labor rates were unrealistically low and deny this protest ground.

Competitive Range Determination

Finally, the protester challenges the agency's competitive range determination, arguing that the agency neither looked behind the adjectival ratings, nor considered price. The VA asserts that the record shows that its evaluation of all factors, including price, as part of the agency's competitive range determination was reasonable and consistent with the terms of the solicitation.

The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. *Cyberdata Techs., LLC*, B-417816, Nov. 5, 2019, 2019 CPD ¶ 379 at 6. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly-rated. *Sea Box, Inc.*, B-408182.5, Jan. 10, 2014, 2014 CPD ¶ 27 at 8 (citing FAR 15.306(c)(1)). We will review that judgment only to ensure that it was reasonable and in accord with the solicitation and applicable statutes and regulations. *CMC & Maint., Inc.*, B-290152, June 24, 2002, 2002 CPD ¶ 107 at 2. An offeror's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. *Id.*

The record here establishes that each proposal was given meaningful, individual consideration under the evaluation factors in establishing the competitive range. For example, the record shows that the agency specifically considered whether to assign an acceptable rating to the technical factor where offerors were assessed a rating of good and a rating of acceptable for the sample task subfactor, and either a rating of good or acceptable for the management subfactor. AR, Tab 10, T4NG On-Ramp Competitive Range Determination Memorandum Step Two at 5. In this respect, in assigning ratings, the agency determined that based on the source selection evaluation board findings, proposals rated as good or better under the technical factor presented stronger technical proposals than proposals, such as Trilogy's, assigned an acceptable rating under the technical factor. *Id.*

Additionally, the record shows that the SSA determined that proposals rated as acceptable under the technical factor, with essentially equal past performance ratings, were neither strong enough in the other non-price factors, nor offered an evaluated price low enough to be considered amongst the most highly rated proposals. *Id.* at 6. Similarly, the SSA further concluded that proposals rated as good or outstanding under the technical factor were among the most highly rated proposals even when considering price and other non-price factors. *Id.* As a result, we find no basis to sustain this aspect of Trilogy's protest.

Given our conclusion that the agency reasonably awarded Trilogy's proposal a rating of acceptable under the most important technical factor, and our rejection of Trilogy's challenge to the agency's price realism analysis, we find reasonable the agency's determination that Trilogy's proposal was not among the most highly-rated offers, and decision to exclude the protester's proposal from the competitive range.

The protest is denied.

Thomas H. Armstrong
General Counsel