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Decision

Matter of: Trademasters Service, Inc.

File: B-418522.2; B-418522.3; B-418522.4; B-418522.5

Date: April 2, 2021

Katherine B. Burrows, Esq., Timothy F. Valley, Esq., Anna R. Wright, Esq., and Anna G. Sullivan, Esq., Piliero Mazza PLLC, for the protester.
Kenneth B. Weckstein, Esq., and Andrew C. Crawford, Esq., Brown Rudnick LLP, for EMCOR Government Services, Inc., the intervenor.
Alexis N. Webster, Esq., and Robert M. Notigan, Esq., General Services Administration, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the awardee's quotation could not possibly include all of the items required under the solicitation given its low price is dismissed because, in essence, the protester contends that the agency should have performed a price realism evaluation. The protester's contention fails to state a valid basis of protest, however, because the solicitation neither provided for nor permitted a price realism evaluation.
 2. Protest alleging that the agency engaged in unequal discussions in a procurement conducted under Federal Acquisition Regulation subpart 8.4 is denied because the agency essentially established a competitive range and conducted discussions with only those vendors in the competitive range. Further, the agency reasonably excluded the protester's quotation from the competitive range after concluding that it did not have a realistic prospect of award due to its price.
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DECISION

Trademasters Service, Inc., of Lorton, Virginia, protests the establishment of a Blanket Purchase Agreement (BPA) with EMCOR Government Services, Inc., of Arlington, Virginia, under Request for Quotations (RFQ) No. 47PD0120Q0003, issued by the General Services Administration (GSA) for facilities maintenance and management. Trademasters challenges numerous aspects of the agency's evaluation of quotations and source selection decision.

We dismiss the protest in part and deny the protest in part.

BACKGROUND

The solicitation, issued on November 26, 2019, sought quotations from holders of GSA Federal Supply Schedule (FSS) No. 03FAC (Facilities Maintenance and Management) contracts, to establish a single fixed-price BPA for facilities services under the rules prescribed in Federal Acquisition Regulation (FAR) section 8.405-3. Agency Report (AR), Exh. 2, RFQ at 1-2, 10. Specifically, the agency solicited for the provision of facilities, engineering, operations, maintenance, and related services at five federal buildings in Washington, D.C., for a 1-year base period and nine 1-year option periods. *Id.* at 1-2, 4. The solicitation provided that award would be made on a best-value tradeoff basis considering price and non-price factors. *Id.* at 10. The non-price factors, in descending order of importance, were: (1) management plan; (2) prior experience; and (3) past performance. *Id.* When combined, the non-price factors were more important than price. *Id.*

Prior to the time set for receipt of quotations, Trademasters protested with our Office the terms of the solicitation, arguing, among other things, that ambiguities in (and missing information from) the solicitation deprived vendors of the ability to intelligently compete on a common basis. We concluded that the information provided in the solicitation was sufficiently detailed, and denied the protest. *Trademasters Serv., Inc.*, B-418522, June 3, 2020, 2020 CPD ¶ 185 at 9.

The agency ultimately received 15 timely-submitted quotations, including those from Trademasters and EMCOR. AR, Exh. 7, Price/Technical Tradeoff Analysis at 1.¹ The evaluation panel assigned ratings of “unacceptable” to 11 of the quotations; “acceptable” to 2 of the quotations, including Trademasters’s; and “very good” to 2 of the quotations, including EMCOR’s. *Id.* at 2-3. The contracting officer eliminated the 11 unacceptable quotations from further consideration, then ranked the vendors (based on their overall technical rating) and conducted a price-technical tradeoff analysis of the 4 remaining quotations, which were submitted by Trademasters, EMCOR, Vendor X, and Vendor Z. *Id.* at 2-3. The rankings were as follows: (1st) Vendor X’s second lowest-priced, very good-rated quotation; (2nd) EMCOR’s lowest-priced, very good-rated quotation; (3rd) Vendor Z’s third lowest-priced, acceptable-rated quotation; and (4th) Trademasters’s highest-priced, acceptable-rated quotation. *Id.* at 3-4.

After conducting the tradeoff analysis, the contracting officer, who also was the source selection authority (SSA), eliminated Trademasters’s quotation from further consideration based on its high price. AR, Exh. 7, Price/Technical Tradeoff Analysis at 6. The contracting officer also eliminated from further consideration the other acceptable-rated quotation (Vendor Z), finding that the quotation contained significant unfavorable elements and was higher-priced than the second-ranked, very good-rated quotation submitted by EMCOR. *Id.* at 8.

¹ The agency submitted both a redacted and unredacted version of its price/technical tradeoff analysis (AR, Exh. 7). The citations herein are to the unredacted version submitted at Electronic Protest Docketing System (Dkt.) No. 48.

With respect to the two top-ranked quotations submitted by EMCOR and Vendor X, the contracting officer concluded that the quality of both quotations was “very good,” and that both presented “a high probability of success and a low level of overall risk[.]” AR, Exh. 7, Price/Technical Tradeoff Analysis at 10. Based on this analysis, the contracting officer found there was “a distinction in technical merit and competitive pricing” between the two top-ranked quotations and the two bottom-ranked quotations. *Id.* at 11. The contracting officer noted, however, the evaluators’ indication that each of the two highest-ranked, very good-rated, technically acceptable quotations “contain[ed] shortcomings” that precluded award on the basis of initial quotations. *Id.* At the evaluation panel’s recommendation, the contracting officer proceeded to engage in exchanges with the two highest-rated vendors--EMCOR and Vendor X. *Id.*; AR, Exh. 14, Price Reasonableness Memorandum at 2.

As relevant here, the four technically acceptable quotations received the following pre-exchange and post-exchange technical ratings and rankings:

	Trademasters Initial	Vendor Z Initial	EMCOR (Initial) Revised	Vendor X (Initial) Revised
Management Plan	Acceptable	Acceptable	(Very Good) Very Good	(Very Good) Very Good
Prior Experience	Very Good	Very Good	(Acceptable) Acceptable	(Very Good) Very Good
Past Performance	Very Good	Very Good	(Very Good) Very Good	(Very Good) Very Good
Overall Technical Rating	Acceptable	Acceptable	(Very Good) Very Good	(Very Good) Very Good
Total Evaluated Price	\$88,749,110	\$59,887,748	(\$[DELETED]) \$61,566,295	(\$[DELETED]) \$78,236,194
Ranking	4	3	(2) 2	(1) 1

AR, Exh. 7, Price/Technical Tradeoff Analysis at 2-4; Exh. 14, Price Reasonableness Memorandum at 3.

After assessing EMCOR’s and Vendor X’s responses to the questions posed in the agency’s self-styled “clarification/exchange” letters, the agency conducted a second price-technical tradeoff analysis between EMCOR and Vendor X. AR, Exh. 14, Price Reasonableness Memorandum at 3-8. The SSA concluded that Vendor X’s higher-rated, higher-ranked quotation did not provide additional benefits or reductions in risk sufficient to justify payment of an approximately \$17 million price premium, and selected EMCOR’s revised quotation as the best value to the government. *Id.* at 7-8.

Following notification of the award decision, Trademasters, the incumbent contractor, protested to our Office. See Protest at 3.

DISCUSSION

This decision encompasses four sets of protest arguments--those in Trademasters's initial and first supplemental protests filed prior to the agency's submission of its report responding to the protest, and those in Trademasters's second and third supplemental protests filed after the agency's submission of its report and supplemental report, respectively.

Trademasters first challenges the agency's evaluation of EMCOR's quotation. Trademasters contended, that EMCOR misrepresented the availability of its key personnel. Trademasters also argues that it is impossible for EMCOR to perform as required by the solicitation at its quoted price. Alternatively, Trademasters argues that the agency's price evaluation was unreasonable because it failed to consider the level of effort and the mix of labor, and associated performance risk, presented by EMCOR's quotation. For the reasons discussed below, we dismiss these arguments.

Trademasters then challenges the agency's conduct of discussions. Trademasters contends that the agency improperly conducted discussions with only EMCOR and Vendor X, and unreasonably excluded Trademasters's quotation from further consideration for award based on a flawed price evaluation. Trademasters further maintains that the agency should have assessed EMCOR and Vendor Xs' initial quotations as technically unacceptable because the evaluators concluded that award could not be made on the basis of the initial quotations. For the reasons discussed below, we deny these protest arguments.²

Withdrawn and Dismissed Protest Grounds

The agency notified Trademasters of the award decision on December 22, 2020. Protest, Exh. 3, Notice of Award. Pursuant to FAR section 8.405-3(b)(3), Trademasters requested a brief explanation of award, which the agency provided on January 7, 2021. AR, Exh. 11, Brief Explanation of Award at 1. On January 4, while awaiting the explanation, Trademasters filed its initial protest based on information included in the agency's notice of award. Protest at 7-8. Then, on January 19, Trademasters filed its first supplemental protest based on information included in the explanation provided by the agency. First Supp. Protest at 3. In the intervening period between the filing of Trademasters's initial and first supplemental protests, the agency requested that we dismiss the initial protest in its entirety. Req. for Dismissal at 1. As further explained below, the following arguments were either withdrawn or are dismissed.

² In its various protest submissions, Trademasters raised arguments that are in addition to, or variations of, those specifically discussed below. While we do not specifically address all of Trademasters's arguments, we have considered them all and find that they afford no basis to sustain the protest.

In its initial protest, Trademasters argued that the awardee misrepresented the availability of its quoted key personnel. Protest at 8-10. In response to information included in the agency's request for dismissal, Trademasters withdrew this protest argument. Resp. to Req. for Dismissal at 2 n.2. Accordingly, we do not discuss this contention further.

Trademasters next represented that the awardee's quoted price was lower than the independent government cost estimate (IGCE) for the incumbent contract, awarded to the protester in 2017. Protest at 8 n.5. Trademasters maintained that it was not possible for the awardee to comply with certain of the solicitation's requirements at such a low price. *Id.* at 10-13. The agency represented that the solicitation did not require a price realism analysis as part of the source selection process, and requested that we dismiss these arguments for failure to state a valid basis of protest. Req. for Dismissal at 2. We agree.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for protest, and that the stated grounds be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

The sole foundation for Trademasters's challenge to the agency's evaluation of EMCOR's quotation is Trademasters's contention that the awardee's price is too low to perform. In the protester's view, the awardee's low price suggests that the agency improperly relaxed the solicitation requirements when it evaluated EMCOR's quotation. Protest at 10-13. Although Trademasters's arguments are styled as challenges to the technical acceptability of EMCOR's quotation, they essentially are arguments that the agency failed to conduct an appropriate price realism analysis. See *PricewaterhouseCoopers Public Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3 (argument that agency should have found awardee's price too low to perform its technical approach is essentially a price realism argument); see also *NJVC, LLC*, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8 (allegation that the agency failed to consider the awardee's low price as part of the agency's technical analysis is an allegation that the agency failed to conduct a price realism analysis).

Trademasters acknowledges, however, that the solicitation at issue here did not require a price realism analysis. Resp. to Req. for Dismissal at 2; Second Supp. Comments at 4; see also RFQ at 16-17. Absent such a solicitation provision, an agency is neither required nor permitted to evaluate price realism in awarding a fixed-price contract, or, as here, establishing a BPA on the basis of fixed prices. *IBM U.S. Fed., a div. of IBM Corp.; Presidio Networked Solutions, Inc.*, B-409806 *et al.*, Aug. 15, 2014, 2014 CPD ¶ 241 at 17. Therefore, we dismiss, as failing to state a legally sufficient basis of protest, Trademasters's protest allegations based on challenges to the awardee's allegedly low price. See 4 C.F.R. §§ 21.1(f), (i).

Similarly, in its third supplemental protest Trademasters contends that the agency failed to consider “the level of effort and the mix of labor” that vendors proposed as part of the price analysis, as required by FAR section 8.405-3(b)(2)(vi).³ Supp. Comments & Third Supp. Protest at 28; Second Supp. Comments at 3-4. Trademasters argues that the agency’s failure to consider these areas “is particularly concerning” because “EMCOR’s final evaluated price is 17.5% less than the IGCE.” Supp. Comments & Third Supp. Protest at 29 (emphasis omitted).

As an initial matter we note that, contrary to Trademasters’s contention, the record reflects that “[t]he Contracting Officer, assisted by technical advisors, reviewed the proposed labor mix and its appropriateness to the requirement along with the schedule rates provided[.]” AR, Exh. 14, Price Reasonableness Memorandum at 4. The record also shows that the agency took into consideration EMCOR’s explanation of “the strategies they employed to enable them to offer the Government a lower price[.]” as well as EMCOR’s specific acknowledgment of applicable collective bargaining agreements.⁴ *Id.* Further, Trademasters’s contention that the agency should have found EMCOR’s low price “concerning” with respect to level of effort and labor mix is, in essence, an argument that the agency should have assessed EMCOR’s price for realism. For the reasons set forth above, because there is no requirement in this solicitation that the agency assess price realism, we also dismiss this argument as failing to state a legally sufficient basis of protest. See *PricewaterhouseCoopers Public Sector LLP*, *supra* at 3; *NJVC, LLC*, *supra* at 8.

Nature of Exchanges with Vendors

³ When, as here, agencies seek to establish BPAs under the FSS for services requiring a statement of work, the FAR provides: “The ordering activity contracting officer shall ensure all quotes received are fairly considered and award is made in accordance with the basis for selection in the RFQ. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform, and for determining that the proposed price is reasonable.” FAR 8.405-3(b)(2)(vi).

⁴ Trademasters also argues that the agency’s price evaluation is not documented adequately. Supp. Comments & Third Supp. Protest at 28; Second Supp. Comments at 3-4. The procurement at issue here was conducted under FAR subpart 8.4, which provides for a streamlined procurement process with minimal documentation requirements. FAR 8.405-3(a)(7); *Sapient Gov’t Servs., Inc.*, B-410636, Jan. 20, 2015, 2015 CPD ¶ 47 at 3 n.2. Based on our review of the record, we conclude that, while the price analysis documentation may be limited, it is sufficient to meet the requirements applicable here.

Trademasters contends that the agency impermissibly conducted discussions with only EMCOR and Vendor X. Comments & Second Supp. Protest at 9-13; Supp. Comments & Third Supp. Protest at 7-13; Second Supp. Comments at 6-9. The agency responds that it did not conduct discussions with these two vendors, but instead engaged in clarifications. Second Supp. Contracting Officer's Statement (COS) at 1-2. For the reasons discussed below, we conclude that the agency conducted discussions rather than clarifications.

As relevant here, the solicitation provided that the agency intended "to establish a BPA without further communicating with contractors[.]" and "highly encouraged" vendors to include "their best technical and pricing quotes in their initial submissions." RFQ at 18. Notwithstanding its stated intention to make award on the basis of initial quotations, the agency reserved "the right to communicat[e] and/or conduct exchanges with any or all contractors[.]" *Id.* The solicitation cautioned, however, that if exchanges were conducted the agency was not "obligated to communicate with every [vendor]." *Id.* The solicitation also advised that a vendor "may be eliminated from consideration without further communication if its technical and/or pricing quotes are not among those contractors considered most advantageous to the Government." *Id.* In "strongly encourag[ing]" vendors to include discounts from their FSS contract prices in their initial quotations, the solicitation explained that "[b]ecause the goal of the GSA Contracting Officer is to establish a BPA without further communicating with contractors, there may be no additional opportunity for contractors to revise BPA pricing submissions or offer further discounts prior to BPA establishment." *Id.* at 17.

While not required to do so, the agency chose to engage in exchanges with the two highest-rated vendors, EMCOR and Vendor X. When an agency conducts exchanges with vendors in a FAR subpart 8.4 procurement, those communications, like all other aspects of such a procurement, must be fair and equitable. *Language Select LLP, d/b/a United Language Grp.*, B-415097, B-415097.2, Nov. 14, 2017, 2017 CPD ¶ 359 at 8. While the requirements of FAR part 15, governing contracting by negotiation, do not apply to procurements conducted under FAR subpart 8.4, our Office looks to the standards and decisions interpreting part 15 for guidance in determining whether exchanges with vendors under a FAR subpart 8.4 procurement were fair and equitable. *Innovative Mgmt. & Tech. Approaches, Inc.*, B-418823.3, B-418823.4, Jan. 8, 2021, 2021 CPD ¶ 18 at 8.

The agency characterizes its communications as clarifications. Second Supp. COS at 1-2. The agency explains that the information sought from EMCOR and Vendor X "was simply utilized to confirm to the evaluation panel and Contracting Officer, that no justification existed to make award to a higher priced firm when an equally rated and lower priced firm was available." *Id.* at 2. The agency represents that no reevaluation occurred and "that none of the revisions submitted had any effect on the final ratings or determination of award." *Id.*

The agency's characterization of its exchanges as clarifications is not controlling; rather, it is the action of the parties that determines whether discussions were held. *Red River*

Computer Co., Inc.; MIS Sciences Corp., B-414183.8 *et al.*, Dec. 22, 2017, 2018 CPD ¶ 7 at 14. As our decisions have long explained, the “acid test” for deciding whether an agency engaged in discussions is whether the agency provided an offeror or vendor an opportunity to revise or modify its proposal. *TDS, Inc.*, B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6.

Here, the record does not support the agency’s characterizations. While the record does not reflect that any of the technical evaluation ratings assigned to EMCOR and Vendor Xs’ quotations changed following exchanges, the record does reflect that additional technical evaluations occurred. Specifically, the evaluators reviewed each vendor’s responses to the agency’s “clarification/exchange” letters to assess whether or how the responses resolved unfavorable aspects evaluated in the vendors’ initial quotations. AR, Exh. 14, Price Reasonableness Memorandum at 5-6. The record also shows that the evaluators undertook an assessment of whether they should make changes to the ratings, noting that both vendors’ responses provided “meaningful information[.]” *Id.* at 7. Most importantly, the record reflects that the agency permitted both vendors to revise their quotations, and that both vendors submitted revised pricing as well as technical revisions that resolved unfavorable aspects of the firms’ initial quotations. *Id.* at 4-6. Accordingly, we conclude that the agency engaged in discussions with EMCOR and Vendor X.

Exclusion of Trademasters’ Quotation from Further Consideration for Award

Having established that the agency conducted discussions, we turn to Trademasters’s contention that the agency did so in an unequal manner by holding discussions with only EMCOR and Vendor X. See Comments & Second Supp. Protest at 9-13; Supp. Comments & Third Supp. Protest at 7-13; Second Supp. Comments at 6-9. In addition to maintaining that it did not conduct discussions, the agency responds to Trademasters’s contention by arguing that even if discussions were conducted, Trademasters cannot show that it was prejudiced by the unequal discussions. First Supp. Memorandum of Law at 3. As explained below, we conclude that the discussions were not unequal because, in essence, the agency established a competitive range from which it reasonably excluded Trademasters’s quotation.

When, as here, an agency conducts an FSS procurement pursuant to FAR subpart 8.4 and excludes a vendor or vendors from further consideration for award, we view the agency’s decision as comparable to an exclusion of a proposal from the competitive range under FAR part 15. *The Dixon Grp., Inc.*, B-406201, B-406201.2, Mar. 9, 2012, 2012 CPD ¶ 150 at 6; *Venturi Tech. Partners*, B-292060, June 10, 2003, 2003 CPD ¶ 114 at 5-6. The determination of whether a proposal or quotation is in the competitive range is a matter principally within the discretion of the procuring agency. *The Dixon Grp., Inc.*, *supra* at 6. Our Office will review an agency’s exclusion of a proposal or quotation from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. *Id.*; *Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 8. Contracting agencies are not required to retain in the competitive range proposals that are not among the

most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. *Id.*; FAR 15.306(c)(1).

As noted above, the record reflects that Trademasters's quotation was excluded from further consideration based on its price, which the contracting officer noted was "significantly higher than the [IGCE.]" AR, Exh. 7, Price/Technical Tradeoff Analysis at 6. In eliminating the quotation, the contracting officer concluded that "no meaningful negotiations could bring the price proposal within an acceptable range of the IGCE[.]" *Id.* Specifically, Trademasters quotation was approximately 18 percent higher than the IGCE (which was \$74,298,274), and approximately 39 percent higher than the lowest-priced quotation, submitted by EMCOR. *Id.* at 4.

Trademasters initially challenged the reasonableness of the IGCE against which the agency evaluated prices, but subsequently withdrew this challenge. Comments & Second Supp. Protest at 9; Supp. Comments & Third Supp. Protest at 1 n.1. Trademasters replaced its IGCE challenge with an argument that the agency reached "internally contradictory determination[s] as to which party would be responsible for certain costs" in evaluating quotations. Supp. Comments & Third Supp. Protest at 17.

In responding to Trademasters's later-withdrawn challenge to the IGCE, the agency explained that certain costs Trademasters included in its price would be borne by the agency, not the contractor. AR, Exh. 13, First Supp. COS at 5-6. Specifically, the agency represented that costs for upgrading or modernizing certain building systems and for remedying existing deficient facility conditions would be borne by the agency, rather than the contractor, under the solicitation's "[r]eimburseable [r]epairs clause[.]" *Id.*

Trademasters contends that its inclusion of costs for some of these items in its quotation was part of the reason its price was higher than other vendors and the IGCE. Supp. Comments & Third Supp. Protest at 17. Trademasters argues that it was unreasonable for the agency not to conduct discussions on this issue, and provide Trademasters an opportunity to remove these items from its price. *Id.* Trademasters bases its argument on its view that the agency reached a different conclusion about responsibility for these costs in its evaluation of EMCOR and Vendor Xs' quotations. *Id.*

The record does not support Trademasters's argument. Rather, the record reflects that the cost-responsibility concerns the evaluators raised with EMCOR and Vendor X during discussions were not related to building systems or deficient facility conditions. Instead, the agency raised concerns related to the possible submission of post-award requests for equitable adjustment based on inaccuracies in the solicitation's equipment inventory list. AR, Exh. 14, Price Reasonableness Memorandum at 5-6. Despite Trademasters's attempt to conflate the two costs, costs for modernizing building systems and costs for servicing un-inventoried equipment are facially different. Accordingly, we find unavailing Trademasters's argument that the agency should have permitted it to remedy the same price concerns it permitted EMCOR and Vendor X to remedy.

Based on our review of the record, we find that the contracting officer reasonably concluded that Trademasters had no realistic prospect of award in light of its significantly higher price. We further find that, in accordance with the solicitation's provision that the agency might eliminate vendors' quotations from consideration for award prior to entering into exchanges, the contracting officer reasonably excluded Trademasters highest-priced quotation from the competitive range. See *The Dixon Grp., Inc.*, *supra* at 7 (finding reasonable agency excluding from further consideration protester's significantly higher-priced and lower technically rated quotation); *Avar Consulting, Inc.*, B-410308, Dec. 8, 2014, 2014 CPD ¶ 362 at 4-5 (finding reasonable agency's later elimination from the competitive range of protester's revised proposal, which was approximately 20 percent higher-priced than the IGCE).

Trademasters nevertheless contends that the competitive range determination was unreasonable because both EMCOR and Vendor X revised their prices during discussions (EMCOR raised its price, and Vendor X lowered its price), but Trademasters was not provided a similar opportunity. Comments & Second Supp. Protest at 12. Trademasters represents that, given such an opportunity, it would have revised both its technical and price quotations. *Id.*; Supp. Comments & Third Supp. Protest at 11, 21; Second Supp. Comments at 8-9. Given the vast disparity in price between Trademasters and EMCOR, however, the record does not support, and Trademasters does not allege, that Trademasters would have lowered its price to a level less than EMCOR's final quoted price. See *id.*

Moreover, the fact that Trademasters could or may have quoted a lower price does not establish any impropriety in the agency's source selection process. *Venturi Tech. Partners, supra* at 5 n.3. The hypothetical price reduction was not part of Trademasters's initial quotation, and, as noted above, the RFQ specifically cautioned vendors to quote their best pricing initially because the agency might not conduct exchanges. Further, even though the agency did conduct discussions after establishing a competitive range, the establishment of the range--and Trademasters's exclusion from it--necessarily was based on vendors' initial quotations. See *e.g.*, *TransAtlantic Lines, LLC*, B-414148, Feb. 7, 2017, 2017 CPD ¶ 163 at 3 ("Further, even assuming that [protester] would have lowered its price as a matter of business judgment, the competitive range determination is based upon the proposals as submitted."). In any case, this argument is immaterial because the agency reasonably excluded Trademasters from the competition, as discussed above.

Trademasters also challenges multiple aspects of the agency's technical evaluation of the firm's own quotation under the most important factor--management plan. First Supp. Protest at 3-19; Comments & Second Supp. Protest at 18-36. Trademasters argues that the agency misread the quotation and applied unstated evaluation criteria, resulting in the unreasonable assessment of numerous "unfavorable aspects[.]" *Id.* Because we find that the agency reasonably excluded Trademasters's quotation from

consideration for award based on its price, we do not reach Trademasters's challenges to the technical evaluation of its quotation.⁵

Best-Value Tradeoff

Trademasters argues that the agency's best-value tradeoff decision was improper because it was based on a flawed evaluation and unequal discussions. First Supp. Protest at 19-20; Comments & Second Supp. Protest at 13-14, 36-37; Supp. Comments & Third Supp. Protest at 20-21; Second Supp. Comments at 9. These allegations are derivative of Trademasters's various challenges to the agency's evaluation and conduct of discussions, which we've concluded do not provide a basis to sustain the protest. Accordingly, we dismiss Trademasters's challenges to the best-value tradeoff because derivative allegations do not establish an independent basis of protest. *GCC Techs., LLC*, B-416459.2, Nov. 19, 2018, 2018 CPD ¶ 394 at 8.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel

⁵ Trademasters further challenges the agency's establishment of the competitive range by arguing that both EMCOR and Vendor X submitted technically unacceptable quotations, which the agency should have excluded from consideration for award. Comments & Second Supp. Protest at 13; Supp. Comments & Third Supp. Protest at 17-19. Trademasters bases its argument on the agency's finding that both EMCOR and Vendor Xs' initial quotations "contain[ed] shortcomings" that precluded award based on initial quotations. *Id.*, citing AR, Exh. 7, Price/Technical Tradeoff Analysis at 11. Trademasters's argument ignores, however, that the evaluators assessed both vendors' initial quotations as technically acceptable, assigned them both overall technical ratings of very good, and concluded that both presented "a high probability of success and a low level of overall risk to the Government[.]" AR, Exh. 7, Price/Technical Tradeoff Analysis at 10. In any event, even if both quotations were considered unacceptable, nothing prevents the agency from including a technically unacceptable proposal or quotation in the competitive range for the purpose of conducting discussions. While exclusion of technically unacceptable proposals is permissible, it is not required. *PTSI/Managed Servs. Inc.*, B-411412, July 20, 2015, 2015 CPD ¶ 236 at 13. A fundamental purpose in conducting discussions is to determine whether deficient proposals or quotations are reasonably susceptible of being made acceptable. *Id.*