

## Decision

**Matter of:** People, Technology and Processes, LLC

**File:** B-418781.4

**Date:** July 2, 2021

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Victor L. Buonamia, for the protester.

Major Mark T. Robinson, and Major Aaron K. McCartney, Department of the Army, for the agency.

Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest arguing that an agency's decision to reevaluate the quoted professional compensation pursuant to Federal Acquisition Regulation provision 52.222-46 is insufficient to remedy a previously protested failure to review the realism of prices is denied where the record shows that this decision is reasonable, consistent with the terms of the unique solicitation at issue, and the protester cannot claim to be competitively prejudiced by the agency's intended approach.

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### DECISION

People, Technology and Processes, LLC (PTP), a service-disabled veteran-owned small business of Tampa, Florida, protests the scope of the agency's corrective action taken following PTP's prior protest of the issuance of a task order under request for quotations (RFQ) No. W9124L20R0020. The task order was issued by the Department of the Army for personnel to instruct the joint fires observers (JFO) course at Fort Sill, Oklahoma. The protester argues that the agency's corrective action in response to a previous protest fails to include an evaluation of price realism and fails to resolve a latent ambiguity in the solicitation.<sup>1</sup>

We deny the protest.

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<sup>1</sup> The protester here proceeded without legal counsel and no protective order was issued in this protest. The agency filed both a protected and redacted version of its report with our Office. Our discussion here references the redacted version of the report, when possible, and is necessarily general in nature in order to avoid reference to non-public information.

## BACKGROUND

The Army issued the RFQ through the General Services Administration's e-Buy system using the Federal Supply Schedule procedures of Federal Acquisition Regulation (FAR) subpart 8.4, and the commercial item procedures of FAR part 12. Agency Report (AR), Tab 2, Contracting Officer's Statement (COS) at 1; AR, Tab 5, Conformed RFQ at 1-2, 64. The RFQ anticipated the issuance of a fixed-price task order with a 1-year base period and one 1-year option period. Conformed RFQ at 43.

The RFQ sought quotations to provide 14 previously qualified terminal attack controller (PTAC) instructors to teach the resident and mobile training team JFO courses, based at Fort Sill. *Id.* at 43-44. Each course would consist of "80 clock hours of JFO instruction from the existing, current, or in revision JFO [plan of instruction] spread across 10 training days." *Id.* Vendors were instructed to prepare their quotations using a baseline of 1,920 labor hours per year so the agency would have a common basis for comparing the relative prices of quotations. *Id.* at 87. The solicitation established minimum instructor qualifications which included minimum experience requirements in specified occupations. *Id.* at 43-44. For example, the RFQ explained that all PTAC instructors shall possess the qualifications of, or have previously been, a joint terminal attack controller or an airborne forward air controller for at least three years. *Id.* at 44-45. The solicitation advised that the "full spectrum of training includes but is not limited to classroom, hands-on, simulation/virtual, field environment and exercises in a safe environment." *Id.* at 47.

The RFQ included only one evaluation factor, price, and stated that the Army would issue a task order to the vendor whose quotation would be most advantageous to the government considering price alone. *Id.* at 88.

The RFQ's anticipated evaluation of price read, in relevant part, as follows:

The Government will evaluate [vendors'] prices for reasonableness using price analysis techniques. Prices evaluated as incomplete, unbalanced, unrealistically high or low . . . inaccurate, or any combination thereof, may be grounds for eliminating a quote from further consideration. The Government will evaluate the price reasonableness of the [vendor's] quoted price and fee/profit. The Contracting Officer may consider comparing the prices received on quotes received, comparison of the proposed prices to historical prices paid, or comparing the prices received to the Independent Government cost estimate, or market research to evaluate reasonableness.

*Id.* at 89. Additionally, the RFQ contained FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* at 107-108.

The Army received four quotations in response to the RFQ. COS at 2. On February 11, 2021, the Army issued a task order to a vendor other than PTP. *Id.* at 3. Subsequently, PTP filed a protest with our Office, arguing that the Army's evaluation of quotations and source selection decision were unreasonable. *Id.*; Protest, attach. 5, Prior JFO Protest at 1-2. Specifically, PTP argued that the Army's evaluation of quotations was flawed because it did not include a price realism analysis, which PTP alleged was required by the solicitation. Protest, attach. 5, Prior JFO Protest at 2. In this regard, PTP argued that the RFQ's evaluation factor stated that quotations would be evaluated for unrealistically low pricing, and that the awardee's price was so low that it reflected a lack of understanding and would result in excessive personnel turnover. *Id.* at 10-12.

After the protest was filed, the Army filed a notice of corrective action, stating that it would reevaluate the price of all quotations received consistent with FAR provision 52.222-46, and make a new source selection decision based on the reevaluation. *People, Tech. & Processes, LLC*, B-418781.3, Apr. 2, 2021, at 1 (unpublished decision). Based on the Army's proposed corrective action, our Office dismissed the protest as academic. *Id.* at 2. On March 29, PTP filed the instant protest with our Office.

## DISCUSSION

PTP argues that the solicitation here required an evaluation of price realism, and that the planned reevaluation anticipated by the agency in its decision to take corrective action is insufficient to comply with the RFQ's requirement. Protest at 1; Comments at 1, 3-8. In this regard, PTP argues that the agency's decision to evaluate only the proposed professional compensation pursuant to FAR provision 52.222-46 is inadequate because this evaluation is not the same as a price realism analysis conducted pursuant to FAR subsection 15.404-1(d)(3), which PTP asserts was required by the RFQ. *Id.* Essentially, the protester is challenging whether the Army's intended review will comply with the terms of the RFQ, arguing that the solicitation requires the Army to undertake a more robust analysis of price realism than what the agency has announced it will actually perform. The Army argues that the corrective action is reasonable, resolves any dispute regarding the terms of the solicitation, and that the protester has failed to demonstrate prejudice. Memorandum of Law (MOL) at 6-7, 11-13. For the reasons explained below, we deny the protest.<sup>2</sup>

PTP argues that the RFQ demonstrates a concern about quality of service, recruitment and retention of personnel, and whether vendors have a clear understanding of the required work. Comments at 5. PTP argues that while the Army's corrective action will include an evaluation of quotations for price realism under FAR provision 52.222-46, the Army is not proposing to "conduct a full price and cost realism analysis with an assessment of risk" pursuant to FAR subsection 15.404-1(d)(3). *Id.* at 8. The Army

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<sup>2</sup> After the protest was filed, the Army requested dismissal, arguing the matter was premature at this juncture. Req. for Dismissal at 3. We declined the request because we think this protest is analogous to a challenge to the terms of a solicitation. See *Domain Name All. Registry*, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7.

argues that its decision to conduct only the realism analysis required by FAR provision 52.222-46, and not a separate, additional realism analysis, is reasonable and consistent with the terms of the solicitation. MOL at 6-8.

Contracting officers have broad discretion to take corrective action where the agency has determined that such action is necessary to ensure a fair and impartial competition. *NCS Techs., Inc.*, B-413500.2, Feb. 14, 2017, 2017 CPD ¶ 123 at 5. As a general matter, the details of corrective action are within the sound discretion of the contracting agency. *Id.*

For procurements contemplating fixed-price contracts (or orders), an agency may conduct a price realism analysis for the limited purpose of assessing whether a vendor's low price reflects a lack of technical understanding or risk, or assessing a vendor's responsibility. See FAR 15.404-1(d)(3). This analysis may only be conducted in a fixed-price environment when offerors have been advised that the agency will conduct such an analysis. *IR Techs.*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 7 (citing *American Access, Inc.*, B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 4-5). Absent a solicitation provision advising vendors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis in issuing a fixed-price order. See *id.*

In PTP's prior protest, it argued that the agency's evaluation of quotations was unreasonable because the solicitation included a provision advising vendors that the agency intended to conduct a price realism analysis, however, the Army's evaluation did not include that analysis. Protest, attach. 5, Prior JFO Protest at 2-4. After reviewing the allegations raised in the prior protest, the agency determined that corrective action was necessary "in order to conduct a price realism analysis as required by FAR 52.222-46." COS at 4. The agency found that "a price realism analysis for professional compensation was indeed required by the solicitation[.]" *Id.* However, the Army argues that a price realism analysis conducted pursuant to FAR subsection 15.404-1(d)(3) was not required by the RFQ, therefore, the Army's corrective action--which will include a reevaluation of quotations pursuant to the terms of the RFQ as written--will include only a price realism analysis conducted pursuant to FAR provision 52.222-46. See MOL at 7-9.

As explained above, the solicitation requested quotations for the services of 14 professional employees with specifically defined qualifications, and set a baseline of 1,920 labor hours per year. Conformed RFQ at 43-44. No technical quotations were requested. Quotations were to be based solely on the proposed price to supply 14 professional employees to teach the required JFO courses.<sup>3</sup> See *id.* at 86-89. As

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<sup>3</sup> We note that the solicitation allowed vendors to choose whether or not to price a "phase-in" period. The phase-in period was encompassed within the 1-year base period, and allowed vendors to propose separate pricing for the time required to transition from task order issuance to full performance. Conformed RFQ at 43, 87. The

noted above, the solicitation advised that the agency would “evaluate [vendors’] prices for reasonableness using price analysis techniques. Prices evaluated as incomplete, unbalanced, unrealistically high or low . . . inaccurate, or any combination thereof, may be grounds for eliminating a quote from further consideration.” *Id.* at 89.

On the issue of whether the solicitation required a price realism analysis, we agree with PTP; the language of the RFQ clearly put vendors on notice that the agency would evaluate pricing, and that pricing found unrealistically low could result in a quotation’s elimination from the competition.<sup>4</sup> Conformed RFQ at 89. This language therefore required the agency to conduct a price realism evaluation. *Esegur-Empresa de Seguranca, SA*, B-407947, B-407947.2, Apr. 26, 2013, 2013 CPD ¶ 109 at 4 (solicitation contemplated price realism evaluation where it notified offerors that unrealistically low prices may serve as a basis for rejection of a proposal).

Given that the solicitation required a price realism analysis generally, and given that the Army’s proposed corrective action includes only the analysis conducted pursuant to FAR provision 52.222-46, we turn to the question of whether the Army’s proposed corrective action is reasonable. For the reasons explained below, we answer this question in the affirmative and therefore deny the protest.

Here, the Army is buying only the services of 14 specifically defined professional employees. Technical quotations were not requested, and price was the only evaluation factor. We think that an analysis of the proposed professional compensation conducted pursuant to FAR provision 52.222-46, under the circumstances of this procurement, is sufficient to meet the price realism requirements of the solicitation. In this regard, the analysis required by FAR provision 52.222-46 will result in a realism

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phase-in period was set to run from March 1 to April 29, 2021; the full performance period of the base year was set to run from April 30, 2021, to February 28, 2022. *Id.* at 43. The RFQ advised that vendors quoting fewer hours during the phase-in period “shall reduce the total number of hours (*i.e.* 1,920 hours) to reflect the hours which will be invoiced” during the phase-in period. *Id.* at 87.

<sup>4</sup> PTP also argues that the solicitation’s sole evaluation factor was latently ambiguous. Protest at 3, 5-7; Comments at 8-11. The essence of this argument is that since the prior awardee submitted a lower-priced quotation than PTP, that vendor must have understood the solicitation as not requiring an evaluation of price realism.

It is well established that an ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. See *e.g.*, *Red Heritage Med., Inc.*, B-418934, Oct. 19, 2020, 2020 CPD ¶ 348 at 2-3 (*citing Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8). Here, the language is not ambiguous because there is only one reasonable interpretation of the RFQ’s sole evaluation factor. We conclude that the RFQ unambiguously notified vendors that quotations would be evaluated for price realism. Therefore, this ground of protest is denied.

review of the only thing required in these quotations--*i.e.*, the amount to be paid to these 14 professional employees.

FAR provision 52.222-46 states in relevant part:

The Government will evaluate [a vendor's total compensation plan] to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.

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The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. . . . [P]roposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees.

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Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

FAR 52.222-46.

We conclude that the agency's decision to reevaluate all quotations consistent with FAR provision 52.222-46 and make a new award decision is reasonable given the unique terms of this solicitation. An evaluation under FAR provision 52.222-46 will assess vendors' understanding of the requirement, and will also consider whether the offeror can perform the requirements of the contract. FAR 52.222-46(a) ("This evaluation will include an assessment of the offeror's ability to provide uninterrupted, high-quality work."); (b) ("Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement."); (d) ("Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.").

This essentially is the same analysis that the agency would conduct for a price realism evaluation pursuant to FAR subsection 15.404-1(d)(3) under the terms of the RFQ here. See FAR 15.404-1(d)(3) (price realism analysis on fixed-price contract assesses whether a vendor's low price reflects a lack of technical understanding). Further, this analysis will address the exact concerns expressed by the protester. Protest at 6 (arguing that PTP understood the solicitation "to require a price realism evaluation [] so that the Agency would be sure that the awardee understood the labor rates needed to recruit and retain highly trained personnel[.]"); Comments at 8 (arguing the agency's evaluation should ensure that vendors understand the work and must address concerns about "performance, recruiting and retention.").

Moreover, PTP has not explained what a price realism evaluation conducted pursuant to FAR subsection 15.404-1(d)(3) would review, under these RFQ terms, that is not already reviewed in an evaluation conducted pursuant to FAR provision 52.222-46. Therefore, PTP does not establish competitive prejudice. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 11-12. In the context of a protest challenging the terms of a solicitation, competitive prejudice occurs where the challenged terms place the protester at a competitive disadvantage or otherwise affect the protester's ability to compete. *Id.*; *Onesimus Def., LLC*, B-411123.3, B-411123.4, July 24, 2015, 2015 CPD ¶ 224 at 6.

We conclude that the agency's decision to conduct a price realism evaluation pursuant to FAR provision 52.222-46 will not put PTP at a competitive disadvantage. As PTP has not demonstrated that the intended evaluation here is inconsistent with the terms of the RFQ, and as the scope of the agency's corrective action will not result in any competitive prejudice to PTP, we deny this protest ground.

The protest is denied.

Thomas H. Armstrong  
General Counsel