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Decision

Matter of: PAE Aviation and Technical Services, LLC

File: B-418828.3

Date: March 17, 2021

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DIGEST

1. Protest alleging that awardee failed to price required elements of its proposed approach is denied where the agency reasonably found the awardee's price proposal to be realistic and consistent with the terms of the solicitation.
 2. Protest challenging agency's assessment of concerns relating to the protester's proposed program execution approach is denied where the agency's concerns were reasonable and consistent with the terms of the solicitation.
 3. Protest arguing that the agency unfairly conducted exchanges with the awardee but not the protester is denied where the agency reasonably, and consistent with the terms of the solicitation, concluded that the protester's proposal did not provide the government with as much potential value as the awardee's proposal.
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DECISION

PAE Aviation and Technical Services, LLC, located in Arlington, Virginia, protests the issuance of a task order to Vertex Aerospace, LLC, located in Madison, Mississippi, under fair opportunity submission request (FOSR) N00421-20-TO-0001, issued by the Department of the Navy for contractor logistics support. PAE asserts that the agency unreasonably evaluated Vertex's price proposal and PAE's proposed program execution approach, and unequally conducted exchanges with some offerors but not PAE.

We deny the protest.

BACKGROUND

On December 20, 2019, the agency issued the FOSR under the Navy's Contracted Maintenance, Modification, Aircrew and Related Services (CMMARS) multiple award, indefinite-delivery, indefinite-quantity contract, seeking organizational-, select intermediate-, and limited depot-level maintenance and logistics support services for F-5N/F and F-16A/B (known as the Adversary Program) aircraft. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4. The solicitation anticipated the issuance of a task order with fixed-price, cost, and labor-hour line items. Agency Report (AR), Tab 4, FOSR at 1428.¹

The solicitation contemplated evaluating proposals using a multiple step approach considering the following evaluation factors: task order administration, contract experience, planned small business participation, program execution, and cost/price. *Id.* at 1449. For the first three evaluation factors, the agency would evaluate each proposal in stages on a pass/fail basis, *i.e.*, first, evaluating task order administration, and, if the proposal received an acceptable rating, proceeding to evaluate the proposal under the next evaluation factor. *Id.* If an offeror's proposal was acceptable under all three factors, the FOSR anticipated the agency evaluating the program execution factor and then conducting a best-value tradeoff considering program execution approach and cost/price. *Id.*

As relevant here, for the program execution factor, the agency was to evaluate each offeror's ability to meet the requirements of the performance work statement (PWS). To do this, the Navy would evaluate manning (*i.e.*, staffing) and supply chain approaches as well as supporting data including, among other elements, "the processes and procedures used to procure parts and material from commercial sources to include . . . using vendors without liability insurance policies." FOSR at 1450. The solicitation instructed offerors to provide information regarding their manning and supply approaches, including, as relevant here, a definition of "any acquisition limitations for parts/materials with regard to using small/existing vendors without current liability insurance policies." *Id.* at 1440.

For the price factor, the agency committed to evaluate the cost and price line items for reasonableness, realism, and completeness. *Id.* at 1451. The solicitation contained a minimum profit requirement, stating that offerors proposing a profit of less than five percent for contract line items, other than the cost reimbursable line items, would be "ineligible for award and would not be further evaluated." *Id.* The FOSR required proposed unit prices, labor rates, and estimated amounts to correspond with the work required, "to include fully pricing the estimated labor by the FOSR and the [p]rogram

¹ Unless otherwise indicated, the page numbers cited in this decision are from the page numbers prepared in response to this protest.

[e]xecution requirements of the submission.” *Id.* at 1445. The offeror bore the burden of explaining any inconsistencies between its proposed program execution approach and its price. *Id.*

The solicitation provided the agency might conduct “oral or written interchanges with one or more [o]fferors, in response to any evaluation factor, or any other aspect of the submission.” *Id.* at 1448. Such interchanges could entail requests for submission change pages or written responses and could be used “to determine the [o]fferor’s understanding of FOSR requirements, enhance the [agency’s] understanding of the submission, fix errors or omissions, as well as obtain other information to facilitate the [agency’s] ability to evaluate the submission and obtain better values.” *Id.* The FOSR stated that all offerors would be treated fairly but noted that this did not mean that interchanges would be conducted with all offerors or that all interchanges would be of the same nature or depth. *Id.* The solicitation further noted that the Navy might determine that one or a few offerors “have the highest potential to provide the best value to the Government” and then “conduct interchanges with only them.” *Id.*

Six offerors, including PAE and Vertex, submitted proposals in response to the solicitation. During the evaluation, the agency provided a total of five interchanges to three of the offerors, including Vertex but not including PAE. COS/MOL at 8.

On May 29, 2020, the agency issued the task order to Vertex. *Id.* On June 15, two offerors filed protests of the award with our Office, DynCorp International LLC (B-418828.1) and PAE (B-418828.2). In response to these protests, the agency took corrective action and reevaluated proposals. *Id.* at 9.

Following the reevaluation, the agency rated the proposals of Vertex and PAE as acceptable under the task order administration, contract experience, and planned small business participation factors. The agency evaluated the two proposals under the remaining two factors as follows:

	Vertex	PAE
Program Execution	Satisfactory Confidence	Limited Confidence
Price	\$534,872,306	\$586,057,296

AR, Tab 9, Decision Memorandum at 2548, 2551.

On November 13, the Navy announced its decision to affirm the award to Vertex. This protest followed.²

² Because the value of the task order at issue exceeds \$25 million, the protest is within our Office’s jurisdiction to review protests of task orders issued under multiple-award contracts awarded by defense agencies. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

PAE challenges the agency's evaluation of Vertex's price proposal, the evaluation of PAE's proposal under the program execution factor, and the Navy's failure to conduct interchanges with PAE. With respect to the price evaluation, the protester argues that Vertex violated the FOSR's requirements by not pricing certain elements of its proposal in contradiction of the solicitation requirement to price all labor elements. The protester asserts that this permitted Vertex to evade the solicitation's five percent profit floor. Specifically, PAE contends that by not pricing these proposal elements, Vertex could lower its price by effectively reducing its profit margin without changing its stated profit rate. In addition, PAE challenges the agency's assignment of two "[c]onfidence [d]ecreasers" to its proposal under the program execution factor as unreasonable and inconsistent with the solicitation's terms.³ Protest at 22. Finally, the protester argues that the agency's failure to conduct interchanges with PAE was unreasonable and violated the FOSR requirement to treat offerors fairly.

While we do not address every argument raised in the protest, we have reviewed each issue and find no basis to sustain the protest.

Price evaluation

The protester contends that the agency allowed Vertex to ignore the FOSR's requirements to price all services and to propose a minimum five percent profit. In addition, the protester contends that the agency's price realism analysis ignored the performance risk associated with these unpriced elements.

The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶148 at 7. Where, as here, a solicitation contemplates the award of a task order with fixed-price portions, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in a proposal. *Maxim Healthcare Servs., Inc.*, B-412967.9, B-412967.11, June 25, 2018, 2018 CPD ¶ 230 at 8. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 8-9.

As relevant here, section 4.5.6 of the FOSR required offerors to propose unit prices, labor rates, and estimated amounts that correspond with the work required, "to include

³ The agency notes that the term "[c]onfidence [d]ecreaser" was initially used during the first evaluation, but not used during the corrective action reevaluation. COS/MOL at 17 n.3. Since the agency has not suggested alternative terminology, this decision continues to refer to such weaknesses as confidence decreaseers.

fully pricing the estimated labor by the FOSR and the [p]rogram [e]xecution requirements of the submission.” FOSR at 1445. In addition, the solicitation required offerors to propose a profit of at least five percent, stating that proposals that proposed less than five percent profit would be ineligible for award. *Id.* at 1451. The FOSR also required the Navy to assess the realism of all contract line items, warning that understated prices “whether due to inconsistencies between the [p]rogram [e]xecution and [p]rice factors for manning or other proposed pricing strategies, lessen[] the [g]overnment’s expectation that the [o]fferor will maintain the full manning level proposed during contract execution.” FOSR at 1451.

PAE argues that Vertex failed to price three elements: (1) the full extent of its exempt employee compensation; (2) [DELETED] associated with Vertex’s transition-in work; and (3) Vertex’s transition out services. We address these in turn.

With respect to Vertex’s compensation for exempt employees, PAE asserts that Vertex did not include the cost of proposed [DELETED] bonuses in its proposal. In this regard, Vertex proposed to compensate exempt employees using both a guaranteed base salary and a [DELETED] payment [DELETED].” AR, Tab 15, Vertex Price Proposal at 02807. PAE contends that only the guaranteed base salary portion of this compensation was expressly included in Vertex’s proposal and that it was unreasonable for the agency to assume that the [DELETED] bonuses were included in Vertex’s overhead costs. The protester notes that Vertex’s proposal does not support the Navy’s assumption or include any detail explaining how these bonus costs were included.

Based on our review, we agree with the agency that it reasonably credited these [DELETED] bonus payments as being captured within Vertex’s proposed indirect rates. In this respect, we find it reasonable for the agency to have interpreted such a conditional bonus payment as not being the type of cost that would be included within Vertex’s direct labor rates. *Id.* at 02807.⁴ While Vertex’s proposal did not expressly spell this out anywhere, we do not find that this omission should have led the agency to assume such costs were not included anywhere in Vertex’s proposal. In this regard, PAE has not shown that it is unusual or out of the norm for conditional payments, such as the bonus payments at issue, to be characterized as indirect costs. In addition, the protester has not alleged that there was any FOSR requirement for Vertex to detail its indirect costs to the level of granularity needed to confirm the fact that they encompassed the [DELETED] payments at issue. Accordingly, we are not persuaded that the agency should have questioned whether the [DELETED] bonus costs were included within Vertex’s indirect costs.

PAE next contends that Vertex impermissibly failed to price several elements of its proposed transition-in services: [DELETED].” *Id.* at 2823. Vertex explains, however,

⁴ The agency credited the [DELETED] bonus costs as overhead costs, rather than as general and administrative costs; Vertex confirmed that it categorized the [DELETED] bonuses as general and administrative costs. Intervenor Supp. Comments at 4 n.1. We find this apparent error to be immaterial.

that these items (i.e., [DELETED], etc.) do not constitute services, and therefore the decision not to price them did not violate the FOSR requirement to fully price all “estimated labor.” FOSR at 1445; see *also* Vertex Reply to Agency Resp. at 4. Since these items were not required to be priced, and since they constituted a small portion of Vertex’s transition-in costs (and not separate contract line item(s)), we do not agree with PAE that these costs should have been subtracted from Vertex’s total profit (which, PAE points out, would have led to Vertex’s proposal violating the minimum profit requirement).

Last, the protester contends that Vertex failed to price its transition-out services. In this respect, the FOSR identified transition phase-out services as a separate requirement from the contractor’s ongoing performance responsibilities taking place at the same time. Despite this, Vertex did not provide a price for this work and instead proposed to “[DELETED]” to perform the phase out activities. AR, Tab 15, Vertex Price Proposal at 2828. The protester contends that Vertex’s failure to price this work violated the FOSR’s requirements to fully price all estimated labor. (PAE also, again points out that subtracting the cost of this unpriced work from Vertex’s proposed profit would lead to Vertex violating the FOSR minimum profit requirement.)

In addition, the protester asserts that the Navy unreasonably failed to consider, during its price realism assessment, the performance risk resulting from Vertex’s failure to price this requirement. In this respect, the protester argues that Vertex offered no explanation as to how [DELETED]. PAE further contends that these tasks, including the coordination of all aspects of the phase out, were significant as demonstrated by the fact that PAE, an incumbent on the effort, proposed costs of nearly [DELETED] to account for this requirement.

Based on our review, we agree with the agency that it adequately assessed the performance impact of Vertex’s proposed approach and reasonably concluded that the requirement could be performed with [DELETED]. In this regard, the Navy reviewed Vertex’s approach and concluded that it was realistic given the minimal nature of the requirement.⁵ AR, Tab 5, Price Summary Report at 02406. In support of this conclusion, the agency noted that this transition effort requires only minimal oversight of tasks over 120 days. We find that this explanation is supported by the FOSR’s description of the requirement, which does not contain extensive tasks to be accomplished during the phase out period. Instead, the FOSR stated that the work would involve the contractor implementing its phase out plan, coordinating with the successor contractor, and conducting a weekly telephone conference with the program office and the successor contractor. FOSR at 01541. While PAE disagrees with the Navy’s assessment of the requirement, and argues that it will involve a significant amount of effort, we see no basis to question the agency’s judgment to the contrary. See *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2 (a protester’s

⁵ The agency also explained that the reason PAE proposed such a large amount for this element was that it over-proposed the contract line item and included [DELETED] where [DELETED] were not expected. See AR, Tab 5, Price Summary Report at 2398.

disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable).

Program execution evaluation

The protester challenges two confidence decreaseers assigned to its proposal as unreasonable and inconsistent with the FOSR. In this respect, the Navy assigned a confidence decreaseer for PAE's proposal to implement reliability-centered maintenance (RCM)⁶ and its failure to propose an approach to using vendors without liability insurance policies.

With respect to the first confidence decreaseer, the agency noted that PAE's proposed use of RCM would result in the performance of several maintenance tasks on a scheduled interval basis (based on flight hours or calendar) contrary to the prescribed conditional interval basis (based on observation and need) required by the authorized technical orders for the weapon system. AR, Tab 6, Program Execution Summary Report at 02466. The protester contends that the assessment of this confidence decreaseer was unreasonable because the use of RCM was required by the terms of the FOSR, which stated that the contractor must meet the requirements of the Commander, Naval Air Forces' Instruction 4790.2C. FOSR at 01522. This instruction provides that the NAVAIR Commander "has directed the application of RCM to all in-service and future aircraft." (Emphasis omitted.) According to the protester, this means the use of RCM for scheduling inspections and part replacement is a non-discretionary requirement. Protest at 25.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Rather, we will review the record only to determine whether the evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* We will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenges amount to disagreement with the agency's considered technical judgments regarding the specific elements of an offeror's proposal. *BNL, Inc.*, B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5.

Here, we find to be reasonable the agency's concern that PAE was proposing to implement an RCM approach that was incongruous with the maintenance-as-needed approach envisioned by the solicitation and with the Navy's RCM procedures. In this respect, the agency noted that by proposing an RCM approach that would result in maintenance tasks being performed on an interval basis, rather than a conditional basis,

⁶ RCM is a data-driven technique based on a set schedule of intervals (*i.e.*, after a certain number of flight hours or other time-based interval) for performance of certain maintenance tasks, rather than a condition-based maintenance schedule that is performed on an "as needed" basis. Protest at 23.

PAE proposed to do the exact opposite of what the technical orders and PWS required. See, e.g., AR, Tab 12, PAE Program Execution Proposal at 02662 (noting that PAE will change an air conditioning pack oil and water separator “Sock” at a scheduled time despite the technical order requiring changes “as needed”).

In addition, the agency notes that the FOSR did not envision that offerors would propose unilateral implementation of an RCM approach. In fact, the Navy’s internal policy documents instruct that the agency is the entity primarily responsible for overseeing the implementation of an RCM program. See AR, Tab 21, NAVAIR 00-25-403 at 02872-02874; AR, Tab 20, NAVAIRINST 4790.20C at 02859-02862. While these guidance documents permit the agency to seek contractor support for this implementation, they recommend a process the Navy should follow, including by providing details in the statement of work and setting scheduled deliverables. See AR, Tab 21, NAVAIR 00-25-403 at 02893. This process was not followed here, further evidencing that the FOSR did not contemplate the approach proposed by the protester, i.e., a unilateral implementation of an RCM approach.

The protester also argues that it was unreasonable for the agency to conclude that PAE’s approach increased the likelihood of unsuccessful performance when the agency’s concerns, e.g., the concern that the approach would result in unnecessary overtime hours, were actually centered around the impact of the approach on PAE’s price. In the protester’s view, any price increases that resulted from implementing an RCM approach were already reflected in PAE’s price proposal, and therefore it was unreasonable for the agency to note these as performance risks. We find, however, that the agency noted several concerns with an RCM approach that went beyond simply the impact of the approach on PAE’s proposed price. In this respect, the agency specifically noted that an RCM approach would result in a reduction in PAE’s overall productive capacity, in PAE’s manning estimates being inconsistent with government estimates, and in higher than planned material usage and costs. Agency Resp. to PAE Comments at 18 (citing AR, Tab 6, Program Execution Summary Report at 02464-02466).

While the protester argues that these concerns are unsupported in the contemporaneous record, we find the agency’s rationales were both contemporaneously supported and reasonable in light of PAE’s proposed approach. For example, the protester asserts that the agency’s manning concern is a *post hoc* rationale that is contradicted by the agency’s acknowledgement that it evaluated PAE’s proposed manning as sufficient to meet the requirements of the PWS. Supp. Comments at 20-21 (quoting Supp. MOL at 19). We note, however, that the agency’s concern regarding the skewing of PAE’s proposed manning was noted by the Navy’s evaluators in the contemporaneous record. See AR, Tab 6, Program Execution Summary Report at 02466.

The protester also challenges the agency’s assessment of a confidence decreaser due to PAE’s failure to propose an approach to using vendors without liability insurance policies. In this respect, instead of proposing such an approach, PAE stated that it had [DELETED]. AR, Tab 12, PAE Program Execution Proposal at 2693. In support of its

concern with this omission, the agency cites section 6.4 of the FOSR, which states that the Navy would evaluate manning and supply chain approaches including “the processes and procedures used to procure parts and material from commercial sources to include . . . using vendors without liability insurance policies.” FOSR at 1450.

PAE contends that this provision must be read in concert with FOSR section 4.4.2, which instructs offerors to provide information regarding their manning and supply approaches, including, among elements, a definition of “any acquisition limitations for parts/materials with regard to using small/existing vendors without current liability insurance policies.” *Id.* at 1440. PAE asserts that the only reasonable way to interpret the above portion of section 6.4, without rendering section 4.4.2 meaningless, is that the solicitation permitted offerors to propose an acquisition limitation to obtain parts/materials from uninsured vendors as one potential approach with respect to using vendors without liability insurance policies.⁷

The agency responds to this argument by asserting that the obligation, in section 4.4.2 to “define acquisition limitations for parts/material with regard to using small/existing vendors without current liability insurance policies,” *id.* at 1440, does not negate the clearly stated evaluation criteria in section 6.4. In section 6.4, offerors were notified that they would be evaluated on their supply chain approaches to using vendors without liability insurance policies.

Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. *Intelsat Gen. Corp.*, B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 8. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int’l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

Here, we find the agency’s interpretation of the solicitation reasonable, and the protester’s interpretation not reasonable. In this respect, we find that the two FOSR sections highlighted by the protester are not inconsistent with one another, and therefore there is no need to read one provision as changing the plain meaning of the other. In this respect, the solicitation clearly advised offerors that, among other

⁷ The protester also contends that it was unreasonable for the agency to assign a confidence decreaser to PAE without having historical data showing any likelihood that the contractor would need to procure parts from a vendor without liability insurance. This argument amounts to an untimely challenge to the terms of the solicitation. In this respect, the argument effectively challenges the need for the evaluation criteria set forth at section 6.4 for offerors to include processes and procedures for procuring part and materials from commercial sources including using vendors without liability insurance policies. Since this challenge was not raised prior to the date for the submission of proposals, we find that it is not timely. See 4 C.F.R. § 21.2(a)(1).

elements, the agency would evaluate offerors' processes and procedures for procuring parts, and their procedures for using vendors without liability insurance policies. Under PAE's reading of this provision, this evaluation criterion would not apply where an offeror decided not to use such vendors, an interpretation that renders the solicitation provision at least partly meaningless.

Instead of such a reading, we find the two provisions are most reasonably read as including independent requirements. In this respect, nothing about FOSR section 6.4 is inconsistent with FOSR section 4.4.2. FOSR section 6.4 advises that the Navy will evaluate the processes and procedures used to procure parts and material from commercial sources to include . . . using vendors without liability insurance policies. In contrast, FOSR section 4.4.2 instructs offerors to provide information on acquisition limitations with regard to using small/existing vendors without current liability insurance policies. Thus, an offeror could implement an acquisition limitation on using uninsured vendors, but, under the solicitation requirements, would still need to provide a process or procedures for using uninsured vendors should such a need arise. In sum, we find that the agency's interpretation reasonably gives meaning to both provisions.

Interchanges with Offerors

The protester also contends that the Navy conducted interchanges on an unfair basis in violation of the terms of the FOSR. Under the solicitation, which was issued pursuant to the authority provided by Federal Acquisition Regulation section 16.505, the agency reserved the right to conduct "oral or written interchanges with one or more [o]fferors, in response to any evaluation factor, or any other aspect of the submission." *Id.* at 1448. The FOSR stated that all offerors would be treated fairly, but noted that this did not mean that interchanges would be conducted with all offerors or that all interchanges would be of the same nature or depth. *Id.* The solicitation noted that the Navy might determine that one or a few offerors "have the highest potential to provide the best value to the Government" and then "conduct interchanges with only them." *Id.*

PAE argues that the FOSR committed the agency to treating offerors fairly during the interchange process, yet the Navy permitted Vertex to explain and correct discrepancies between the program execution and price sections of its proposal, thereby allowing Vertex "an opportunity to resuscitate a proposal that was otherwise entirely unawardable." Comments at 25 (emphasis omitted). The protester contends that Vertex's ineligible proposal should therefore not have been selected as having "the highest potential to provide the best value to the [g]overnment." *Id.* (citing FOSR at 01448). In the protester's view, the agency violated the fairness requirement by conducting interchanges with Vertex, despite its ineligible proposal, but not PAE, which had a compliant proposal that would have improved through such interchanges. We find that the agency reasonably conducted interchanges with Vertex but not PAE. In this regard, while the FOSR stated that the Navy would treat all offerors fairly, it also stated that the agency might conduct interchanges with only those offerors with the highest potential to provide the best value. FOSR at 1448. Here, the agency examined PAE's proposal but found that it was the most expensive proposal, approximately \$47.2

million more than Vertex's, and had the issues discussed above pertaining to its program execution approach. See AR, Tab 7, Memorandum on Interchanges at 02498-02499. While the protester asserts that its proposal had a higher potential for award than Vertex's ineligible proposal, we find that the agency reasonably concluded that PAE's more expensive proposal offered less potential value to the agency, and therefore decided to conduct interchanges with Vertex but not PAE.

The protest is denied.

Thomas H. Armstrong
General Counsel