



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: Navient Solutions, LLC

File: B-418870; B-418870.5

Date: October 6, 2020

Jonathan D. Shaffer, Esq., and Todd M. Garland, Esq., Smith Pachter McWhorter PLC, for the protester.

Scott F. Lane, Esq., Katherine S. Nucci, Esq., and Jayna Marie Rust, Esq., Thompson Coburn LLP, for the Missouri Higher Education Loan Authority and the Texas Guaranteed Student Loan Corporation; and Rebecca E. Pearson, Esq., Christopher G. Griesedieck, Esq., and Taylor A. Hillman, Esq., Venable, LLP, for F.H. Cann & Associates, the intervenors.

John W. Kim, Esq., and Megan R. Nathan, Esq., Department of Education, for the agency.

Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of award of five indefinite-delivery, indefinite-quantity contracts for business process operations across the entire life cycle of student loan financing is dismissed as untimely where the agency established common pricing consistent with the terms of the solicitation, and where the solicitation stated that contracts would be offered to the next highest-ranked proposals if any offeror, like the protester, rejected its award.

DECISION

Navient Solutions, LLC, of Wilmington, Delaware, protests the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts to Edfinancial Services, LLC; F.H. Cann & Associates LLC; MAXIMUS Federal Services Inc.; Missouri Higher Education Loan Authority (MOHELA); and Texas Guaranteed Student Loan Corporation (Trellis), pursuant to request for proposals (RFP) No. 91003119R0008, issued by the Department of Education, Office of Federal Student Aid (FSA), for contact center operations and back-office processing activities encompassing the entire student aid life cycle. The protester contends that the contract offered by the agency contained terms and conditions that are materially different from the RFP and that exceed the agency's minimum requirements such that the agency was required to issue an RFP amendment.

The protester also contends that the agency failed to perform a price realism analysis, and that the common pricing established by the agency is unrealistically low.

We dismiss the protest.

BACKGROUND

On January 15, 2019, the agency issued the RFP using Federal Acquisition Regulation (FAR) part 15 procedures to award multiple IDIQ contracts, each comprised of a 3-year base ordering period and a 3-year option ordering period. Agency Report (AR), Tab C, RFP at 1, 3.¹ The contracts will provide for the issuance of fixed-price task orders. *Id.* at 3. The maximum ordering value for the contracts is \$1.7 billion, and the minimum guaranteed value for each contract is \$1.5 million. *Id.* The purpose of the contracts is to provide a more efficient and effective customer experience to students, parents, and borrowers seeking student financing information and services, from loan application through servicing and recovery. *Id.* at 4. The RFP explains that FSA's lending portfolio includes \$1.4 trillion in outstanding loans, which is growing at seven percent per year, driven by nearly \$100 billion in annual disbursements across more than 17 million annual loan originations. *Id.*

The solicitation advised that proposals would be evaluated on the basis of the following factors: (1) technical approach, (2) past performance, (3) small business participation, and (4) price. *Id.* at 75-78. For purposes of award, the non-price factors, when combined, are "significantly more important" than price, and past performance is significantly more important in the tradeoff assessment, followed by technical approach, and then small business participation. *Id.* at 74. The RFP stated that by submitting a proposal, an offeror acceded to all solicitation requirements, including terms and conditions. *Id.*

As relevant here, the RFP required offerors to propose pricing consistent with the pricing template provided with the RFP, and to set forth assumptions made for all operating elements, sub-elements, and pricing methodologies. *Id.* at 3, 67. The template required that offerors propose prices for contact center support and back office processing, and included task descriptions for those services. RFP attach. 18, Pricing Template, Proposal Pricing Tab; *id.*, Task Descriptions Tab.

For the contact center support pricing, the pricing template stated: "Offerors shall provide pricing for Inbound/Outbound calls on both a per task and per second basis. FSA will select the preferred billing methodology." *Id.*, Proposal Pricing Tab fn. 2. With respect to the inbound/outbound calls, the pricing template provided for a variety of volumes, durations, and tiers, as applicable. *Id.*, Instructions Tab. Specifically, the pricing template stated: "Offerors shall provide Contact Center Support pricing for both

¹ The RFP was amended nine times. All citations to the RFP are to the conformed final version issued in solicitation amendment 9.

the 24/7/365 period and the 6AM-11PM(EST)/7/365 period. FSA will select the preferred hours of operation for Contact Center Support.” *Id.*, Proposal Pricing Tab fn. 1. Inbound call pricing included the following three tiers: (1) 1 – 3,200,000; (2) 3,200,001 – 8,000,000; and (3) 8,000,001+; outbound call pricing included the following three tiers: (1) 1 – 723,000; (2) 723,001 – 1,800,000; and (3) 1,800,000+. *Id.*, Proposal Pricing Tab.

The RFP provided categorical data regarding expected volumes of work. RFP at 16-17. For example, the solicitation indicated that through customer outreach and communications “[approximately] 48 million inbound calls [are] received annually, with an average handle time of [approximately] 7 minutes for those calls handled by an agent.” *Id.* at 16. Regarding the expected volumes, the RFP stated as follows:

FSA expects that many of the customer and partner engagement figures will significantly change in the future as new solutions are implemented (e.g., a digital platform with greater self-service functionality will create less need for inbound calls and outbound postal mailings). The volumes presented [] are illustrative and not comprehensive of all activities across the full life cycle of student financing. These are NOT guarantees of work or volume in the future.

Id. at 15. The pricing template also incorporated the expected duration assumptions, as applicable, for example, indicating seven minutes for certain inbound and outbound calls. RFP attach. 8, Pricing Template, Proposal Pricing Tab. The template further stated as follows:

SPECIAL NOTICE TO OFFERORS: FSA intends to make multiple [] awards. The volume and duration assumptions provided in this template are for informational purposes only. The durations provided are NOT guarantees of future work and/or volumes for [] providers. The volumes and durations are illustrative and shall be used by Offerors as a baseline for pricing purposes.

Id. Regarding the evaluation of price proposals, the RFP stated that the agency would evaluate the reasonableness and realism of the proposed pricing, and that offerors that did not provide reasonable and realistic pricing may be ineligible for award. RFP at 77.

The RFP also explained that FSA would establish common pricing, common performance metrics, and a common Performance Work Statement (PWS) prior to contract award, and that the common pricing established in the IDIQ contracts would apply to all task orders. *Id.* at 65. In addition, the RFP included procedures for establishing new common pricing and performance metrics after award via a bilateral

contract modification that would be applicable to future task orders.² *Id.* at 66. A bilateral modification rejected by an IDIQ contract holder would result in its ineligibility for future task orders and the issuance of a ramp-down order priced at the common pricing in effect at that time.³ *Id.*

With respect to the common pricing, the RFP explained that the agency intended to award “multiple contracts with [] fair and reasonable common pricing, established under FSA’s discretion and considering any reasonable price proposals from Offerors with acceptable Technical Approach, Past Performance, and Small Business Participation.” *Id.* at 75. Specifically, the RFP stated: “Common pricing contracts sufficient to meet FSA’s needs will be offered to multiple acceptable Offerors in order of proposal ranking. Should any such Offeror reject FSA’s common pricing contract, FSA may, at its discretion, offer common price contracts to the Offeror(s) with the next highest ranked proposal(s).” *Id.* The RFP further stated that the agency’s establishment of common pricing would not constitute discussions as defined in FAR 15.306, and that proposed pricing may be used to discriminate between offerors found to be substantially equal in terms of the RFP’s non-price factors. *Id.* at 78.

The agency received 12 proposals in response to the RFP, including from the awardees and the protester. Contracting Officer’s Statement (COS) at 7. Four of the twelve proposals were deemed to be unacceptable under one or more of the non-price factors, and were not further evaluated for award. *Id.* at 7-8; see also AR, Tab G, Pricing Evaluation Panel (PEP) Report at 1. In its evaluation of the remaining eight proposals, the PEP stated that it considered the government’s independent cost estimate, U.S. Bureau of Labor Statistics (BLS) economic cost index, private sector labor categories pricing data, and industry data from market research, to perform a price reasonableness analysis in accordance with FAR 15.404-1(b). AR, Tab G, PEP Report at 1. In addition, citing the fixed-price nature of the contracts, the PEP “determined that there was no

² Specifically, the RFP stated that 60 days prior to the conclusion of any task order with a commonly ending period of performance, FSA would issue a data call to all IDIQ contractors to determine whether new common pricing and performance metrics should be established, and evaluate new common pricing for fairness and reasonableness. RFP at 65. Further, the RFP stated that if FSA determined that an adjustment in common pricing and/or performance metrics was necessary, FSA would issue a bilateral contract modification for all IDIQ contracts to incorporate the new common pricing and/or metrics, and limited pricing adjustments to existing contract line item numbers to plus or minus two percent during any review period. *Id.* at 66. The RFP additionally included a standard escalation methodology to be applied by FSA to the common pricing established under the IDIQ contracts. *Id.*

³ The RFP states: “Ramp-down task orders are for the purpose of winding down [the IDIQ contractor’s] business with FSA. Ramp-down task orders will provide for all tasks necessary to service the [IDIQ contractor’s] Accounts until those accounts can be transferred. [The IDIQ Contractor] will not be eligible for new Accounts or Work.” RFP at 24.

need to conduct a price realism analysis. The solicitation did not require offerors to submit certified cost or pricing data, [and] price analysis was used pursuant to FAR 15.404-1(a)(2).” *Id.* The PEP concluded that only one offeror submitted a reasonable price proposal, and that the other price proposals were in part, or completely, unreasonably priced. COS at 12; AR, Tab G, PEP Report at 4-11.

The source selection authority (SSA), who also served as the contracting officer, ranked the proposals and concluded that it was in the best interest of the government to offer contracts to all eight offerors that remained eligible for award. AR, Tab H, Price Negotiation Memorandum (PNM) at 38-40. The SSA drafted a common contract incorporating the common pricing, common PWS, and common performance metrics established by FSA. COS at 14.

On June 18, 2020, the agency notified Navient that its proposal had been selected for award, and provided Navient the offered contract. AR, Tab I, Navient Notice of Award at 1. The notice of award specifically stated as follows:

Navient must accept the Common PWS, Pricing and Performance Standards prior to award. Your company has two (2) business days to review and accept or reject FSA’s offer. As stated in the solicitation, FSA does not consider its establishment of common pricing discussions as defined in FAR 15.306. Therefore, please be advised that rejection of this offer is a basis for non-award.

Id.

On June 22, Navient responded that it was “unable to accept the award on the terms of the [o]ffered [c]ontract” but would “welcome the opportunity to discuss [its] concerns with [FSA].” AR, Tab K, Letter from Navient to FSA, June 22, 2020. On June 24, the SSA contacted Navient by phone to discuss its concerns regarding the terms in the offered contract. COS at 19. Later that day, Navient confirmed its rejection of the offered contract. AR, Tab M, Letter from Navient to FSA, June 24, 2020.

Five of the eight awardees accepted the offered contracts, and the SSA concluded that five IDIQ contracts “would be sufficient to handle the anticipated workload.” COS at 20. On June 24, the agency publicly announced that it had signed contracts with five companies as a result of the procurement. AR, Tab BB, Department of Education Press Release. This protest followed.

DISCUSSION

The protester contends that the terms of the offered contract differ so materially from the RFP that the agency was required to issue an amendment to the solicitation and provide offerors an opportunity to submit revised proposals. The protester further contends that the agency failed to conduct a price realism analysis as required by the RFP, and that the common pricing established by the agency is unrealistically low. For

the reasons discussed below, we conclude that the protester's challenges to the awarded contracts constitute untimely challenges to the terms of the solicitation, and dismiss the protest.⁴

Interested Party

As an initial matter, the agency argues Navient is not an interested party because it was an awardee that chose to reject the offered contract, and thus does not have standing to bring its protest because it cannot demonstrate competitive prejudice. Req. for Dismissal at 5-7; Memorandum of Law (MOL) at 6-10. Specifically, the agency argues that to establish competitive prejudice, a protester must show that but for the agency's actions it would have received award, a showing that Navient cannot make. MOL at 6-10. The agency also argues that Navient's rejection of the contract may even constitute a written withdrawal of its proposal in accordance with FAR 15.208(e). *Id.* at 8 n.5. Based upon the facts presented here, we disagree.

The jurisdiction of our Office is established by the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. That authority states that only an interested party may protest a federal procurement, including the award or proposed award of a contract. *Id.* §§ 3551, 3553(a). That is, a protester must be an actual or prospective bidder or vendor whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves the consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *REEL COH Inc.*, B-418095, B-418095.2, Jan. 10, 2020, 2020 CPD ¶ 55 at 7.

Here, the protester contends that the contract it was offered and the five awarded contracts differ materially from the terms of the solicitation, and that the agency failed to

⁴ The protester also argues that the abbreviated time frame of two business days provided by the agency to accept or reject the offered contract was unreasonable. Protest at 20-21. The FAR does not establish a period of time for an agency to leave open a government offer for acceptance. An agency must provide an offeror a reasonable opportunity to respond to its request for written acceptance of a government offer; however, what constitutes a reasonable opportunity to respond will depend on the circumstances of the individual acquisition, and the decision as to the appropriate response time lies within the discretion of the contracting officer. *See AeroSage, LLC*, B-417289, Apr. 24, 2019, 2019 CPD ¶ 151 at 4 (concerning acceptance of government offer made pursuant to a request for quotations). Here, since we have concluded that the agency was not required to amend the RFP, we find that the time provided was not unreasonable under the circumstances.

amend the RFP in violation of FAR 15.206(a).⁵ Protest at 1-2, 16-21. If our Office were to sustain the protest on this basis, we would likely recommend that the agency issue an amendment to the RFP, accept and evaluate revised proposals, and make a new award decision. Since Navient would be in a position to submit a revised proposal, we find that the protester has a sufficient economic interest to qualify as an interested party eligible to challenge the contract awards.

Requirement to Amend the RFP

The protester argues that the offered contract differs materially from the RFP and imposes unreasonable requirements beyond the agency's minimum needs. Specifically, Navient argues that the terms for pricing and task duration were changed by the agency's removal of the volume assumptions included in the RFP, and also by the requirements that common pricing be fixed regardless of task duration and the contractor ensure staffing levels consistently meet or exceed the common performance standards. Protest at 16-18; Comments at 13-20. Navient further argues that these requirements exceed the agency's minimum needs because actual task durations and volumes may be significantly higher or lower than the RFP's assumptions, which unreasonably shifts financial risk to the contractor. *Id.* at 18-20; Comments at 20-23.

In particular, the protester identifies two provisions of the contract that it believes changed the terms of the RFP such that the agency was required to issue an amendment. The offered contract included the following "special note" relative to the common pricing established in the contracts:

1. Common Pricing shall be fixed regardless of the duration of any individual task performed by a [] Provider within each operating element identified under Contact Center Support or Back-Office Processing (e.g. Inbound/Outbound Calls, Chat Sessions, SMS/Text Exchanges, Manual Email Exchanges, Eligibility Processing tasks, Origination and Disbursement Processing tasks, etc.).
2. The Common Pricing established for all Inbound and Outbound Calls under Contact Center Support is predicated on a tiered approach based on a "Monthly Volume/Tier Range". The price per Call, in any given month, shall decrease once the [] Provider has reached the ceiling for any given "Monthly Volume/Tier Range". Thereafter, the price per Call shall be invoiced at the next highest "Monthly Volume/Tier Range" common price, up to the established ceiling for that tier. Once the established ceiling for that tier is reached, any individual Calls above that tier ceiling shall be invoiced at the common

⁵ This section of the FAR states: "When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation." FAR 15.206(a).

price applicable to the highest tier range, for the remainder of that month.

AR, Tab J, Navient Offered Contract at 3-4. In addition, the common PWS of the offered contract stated, in part: “To ensure work and tasks assigned are completed/handled [IDIQ contractors] shall. . . [e]nsure staffing levels support volume forecasts provided by FSA and/or Next/Gen partners to consistently meet or exceed FSA’s Common Performance Standards.” *Id.* at 35. The contracts offered to the awardees included identical common pricing established by the agency, and indicated that for the contact center support, the agency selected pricing on a per call basis--as opposed to a per second basis--for operations seven days a week from 6:00 a.m. to 11:00 p.m. *Id.* at 5-7; see *also* AR, Tab U, Edfinancial Contract at 5-7; Tab V, F.H. Cann Contract at 5-7; Tab W, MAXIMUS Contract at 5-7; Tab X, MOHELA Contract at 5-7; Tab Y, Trellis Contract at 5-7.

The agency argues that the terms in the offered contract are consistent with the RFP, and that it was not required to amend the RFP because its requirements have not changed. The agency asserts that it properly established common pricing in accordance with the terms of the RFP, and selected the proposed pricing (*i.e.*, the per call methodology) most advantageous to the agency for purposes of managing and administering the contracts. MOL at 10-15. The agency also argues that Navient’s protest allegations are insufficient and unsupported, and constitute untimely challenges to the terms of the solicitation. *Id.* at 15-18.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. 4 C.F.R. § 21.2. The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Tribologik Corp.*, B-417532, Aug. 2, 2019, 2019 CPD ¶ 284 at 10. Under these rules, protests based upon alleged improprieties in a solicitation, which are apparent prior to the time set for receipt of initial proposals, must be filed prior to that time. 4 C.F.R. § 21.2(a)(1).

As detailed above, the RFP informed offerors that the agency intended to establish common pricing that it believed to be fair and reasonable, and would select its preferred hours of operation and billing methodology. RFP at 75; RFP attach. 18, Pricing Template, Proposal Pricing Tab fn. 1 (“Offerors shall provide Contact Center Support pricing for both the 24/7/365 period and the 6AM-11PM(EST)/7/365 period. FSA will select the preferred hours of operation for Contact Center Support”) and fn. 2 (“Offerors shall provide pricing for Inbound/Outbound calls on both a per task and per second basis. FSA will select the preferred billing methodology.”). The RFP also stated that the assumptions provided were for informational purposes only, and established the procedure by which the common pricing could be adjusted prior to the issuance of future task orders. RFP attach. 8, Pricing Template, Proposal Pricing Tab (“The volume and duration assumptions provided in this template are for informational purposes only. The durations provided are NOT guarantees of future work and/or volumes. . . .”); RFP at 65-66.

In addition, the RFP stated that the agency would establish a common PWS and performance standards. RFP at 65. Further, the RFP required that offerors “submit a Staffing Plan that explains their execution strategy and details how the staff will be identified, recruited, developed, managed, and retained to ensure the staff will accurately, effectively, and efficiently execute contact center support and back-office processing, while maintaining attentiveness to customer and partner needs.” *Id.* at 70. The RFP also stated that awards that were rejected would result in award being made to the next highest-rated offeror. *Id.* at 75.

On this record, we find that the terms of the offered contract are consistent with the terms of the RFP, and do not reflect a change in the agency’s requirements such that it was required to issue an amendment to the solicitation. Specifically, we find that the agency established common pricing consistent with the terms of the RFP. We further find no basis to conclude that it was unreasonable for the agency to require that offerors provide staffing sufficient to meet task order requirements. Accordingly, to the extent that Navient now contends that the contract offered by FSA established common pricing and performance standards without providing offerors an opportunity to submit a revised proposal, such a challenge constitutes an untimely challenge to the terms of the solicitation. As a result, we dismiss this protest allegation as untimely.

Price Realism

The protester also argues that FSA failed to perform a price realism analysis as required by the RFP. According to Navient, this failure resulted in the rejection of the offered contracts by experienced and larger companies, like Navient, and the acceptance of the offered contracts by awardees that do not understand the requirements. Protest at 23-25; see *also* Supp. Protest at 5-9.

The agency argues that the PEP determined that a price realism analysis was not required because the agency intended to award fixed-price task orders, the RFP did not require certified cost data, and the PEP performed a price analysis consistent with FAR 15.404-1(a)(2). MOL at 23-25. Specifically, the agency argues that its establishment of fair and reasonable common pricing “inherently built in all of the core tenets that underscore a price realism analysis,” and it was not required to conduct a price realism analysis on its own fair and reasonable common pricing, which was established with a clear understanding of the agency’s own contract requirements. *Id.* at 23-24. FSA also argues that Navient cannot establish prejudice because its proposal was not eliminated from the competition as a result of a price realism analysis or the lack of one. *Id.* at 24-25.

The protester argues that if the agency determined that a price realism analysis was unnecessary, the agency was required to amend the RFP, and Navient was prejudiced by its failure to do so. Comments at 30-34. In addition, Navient argues that the common pricing established by the agency is unrealistically low, and the awardees will be forced to perform at little to no profit. *Id.* at 34-39.

As noted, the RFP stated that the agency would “review the reasonableness and realism of the proposed pricing,” and that offerors that did not provide reasonable and realistic pricing may be ineligible for award. RFP at 77. The record shows that the PEP summarized its price analysis as follows:

Based on review of the Offerors’ price proposals for making an adequate price competition determination, (i.e., two or more Offerors with reasonable price proposals), the PEP found that one Offeror submitted a reasonable pricing proposal for both the Contact Center and Back Office Processing labor categories and four Offerors submitted reasonable pricing proposals for Back Office Processing. Therefore, in addition to the Offeror’s price proposals, the PEP considered the government’s Independent Government Cost Estimate (IGCE), U.S. Bureau of Labor Statistics (BLS) Economic Cost Index, Private Sector labor categories pricing data, and industry data from market research (Grant Thornton Government Contractor Labor Rates survey and FSA’s Acquisition Strategy Team commercial industry pricing data), in conducting a price reasonableness analysis in accordance with FAR [15.404-1(b)], price analysis for commercial and non-commercial items. Additionally, per the solicitation, this procurement is to award a firm, fixed-price contract, not a cost-reimbursement nor a fixed-price incentive contract. Thus, the PEP determined that there was no need to conduct a price realism analysis. The solicitation did not require offerors to submit certified cost or pricing data, therefore, price analysis was used pursuant to FAR 15.404-1(a)(2). Thus, the PEP determined that there was no need to conduct a cost realism analysis under FAR 15.404-1(d), Cost Realism analysis.

AR, Tab G, PEP Report at 1. In its comparison of offerors’ prices to the IGCE, the PEP concluded that the “Offerors’ proposed sub-element labor category prices were widely dispersed and disparate.” *Id.* at 2. The PEP also used BLS and Grant Thornton data to compute the “fair and reasonable recommended common pricing for the floor, mid-point, and ceiling” for each task and all of the pricing scenarios included in the pricing template.⁶ *Id.* at 2-3. The PEP compared offerors’ base year prices to FSA’s common pricing floor and ceiling, and calculated the variances to establish if proposed prices fell within the recommended common pricing ranges. *Id.* at 3; *see also id.*, attach. D, Common Pricing Comparison by Offeror.

Based on its analysis of the eight proposals evaluated, the PEP concluded that only one offeror proposed reasonable prices for the contact center support, and the other seven

⁶ In its development of the common pricing, the PEP also indicated as follows: “The industry average was reduced by 10% to reflect FSA’s [] vision of efficient and effective processes, and a 15% +/- range was incorporated to allow for flexibility in reasonable pricing, to account for undefined process complexities, (+) and future modernizations (-).” AR, Tab G, PEP Report at 3.

offerors' proposed prices exceeded the common price ceilings and were deemed unreasonable. *Id.* at 4-11. The PEP further concluded that four offerors proposed reasonable prices for back office processing, and the other four offerors' proposed prices exceeded the common price ceilings and were deemed unreasonable. *Id.* Specifically, regarding Navient's proposed price, the PEP concluded that 95 percent of the proposed contact center pricing exceeded the recommended common price ceiling by 12 to 46 percent; approximately 77 percent of Navient's proposed back office processing pricing fell within the recommended common pricing ranges, and 23 percent exceeded the common price ceilings by 6 to 35 percent. *Id.* at 8. Nonetheless, the agency concluded that it would offer contracts to all eight offerors.⁷ AR, Tab H, PNM at 38-39.

Further, the record shows that the agency considered the consequences if offerors were to reject the offered contracts, stating as follows:

If fewer than [DELETED] Offerors accept these contracts [], the [contracting officer] may increase the common pricing as appropriate. Common Price adjustments will be determined based upon information available to the government at the time, as such information is made available. For example, if [DELETED] out of the eight (8) Offerors accept, the [contracting officer] will have reasonable confidence that the price point is fairly close and only minor adjustments will be made. But if only [DELETED] out of eight (8) Offerors accept the common price, then more adjustments, possibly significant adjustments may be necessary. Any adjusted common pricing will be offered to all eligible Offerors, including those Offerors who previously accepted.

AR, Tab H, PNM at 40. As noted, five offerors accepted the offered contracts.

Price reasonableness and price realism are distinct concepts. *Logistics 2020, Inc.*, B-408543; B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7. The purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. FAR 15.404-1(b); *Logistics 2020, Inc.*, *supra*. Conversely, a price realism review is to determine whether the prices are too low, such that there may be a risk of poor performance. FAR 15.404-1(d) (a realism analysis reviews whether the cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal); *Logistics 2020, Inc.*, *supra*. Where a solicitation provides for the evaluation of price realism, the agency must conduct such an evaluation in a manner that is reasonable and consistent with the parameters

⁷ The common pricing established in the offered contracts consisted of the common floor pricing for the back office processing on a per task basis and contact center support for 6AM-11PM(EST)/7/365 operations on a per call basis. *Compare* AR, Tab G, PEP Report, attach. D, Common Pricing Comparison by Offeror *with* Tab J, Navient Offered Contract at 5-7.

established in the solicitation. *Valor Healthcare, Inc.*, B-412960, B-412960.2, July 15, 2016, 2016 CPD ¶ 206 at 8.

Agencies may use a variety of price evaluation methods to assess realism, including a comparison of prices received to one another, to previously proposed or historically paid prices, or to an independent government estimate. *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 3. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Delaware Res. Grp. of Oklahoma, LLC*, B-408962.3, B-408962.4, Mar. 24, 2014, 2014 CPD ¶ 111 at 8.

On this record, we find the agency's price analysis unobjectionable. We recognize that the PEP concluded that "there was no need to conduct a price realism analysis," despite the RFP's express statement that the agency would review the realism of the proposed pricing and that unrealistic pricing could make an offeror ineligible for award. However, the record shows that the PEP considered a variety of data to establish common pricing ranges and performed an analysis of offerors' proposed pricing to determine if they fell within the established common pricing ranges, an exercise which necessarily resulted in the assessment of whether the prices were too low. As discussed, and to the contrary, the PEP concluded that a majority of the offerors' proposed prices were unreasonable, that is, that the proposed prices were too high.

Insofar as the gravamen of the protester's contention is that the common pricing established by the agency is unrealistically low, we again find that this argument constitutes an untimely challenge to the terms of the solicitation. The RFP expressly stated that the agency intended to award "multiple contracts with a fair and reasonable common pricing, established under FSA's discretion and considering any reasonable price proposals from Offerors with acceptable Technical Approach, Past Performance, and Small Business Participation." RFP at 75. The RFP also clearly contemplated that an offeror might reject the common pricing, in which event the agency at its discretion would offer contracts to offerors with the next highest ranked proposals.⁸ *Id.*

While Navient and others may disagree that the common pricing established by FSA is realistic, fair or reasonable, nothing in the RFP required that the agency continue to negotiate its common pricing with Navient once its offer was rejected. To the contrary, the RFP expressly stated that "[t]he establishment of common pricing is not considered discussions as defined in FAR 15.306." *Id.* at 78. In addition, the RFP expressly stated that by submitting a proposal, the offeror acceded to all solicitation requirements, including terms and conditions. *Id.* at 74. In effect, Navient's argument is that the common pricing established by the agency should have been subject to negotiation, rather than simply accepted or rejected by an offeror, a challenge Navient was required to raise prior to the closing date of the solicitation. 4 C.F.R. § 21.2(a)(1). As discussed above, we find that the agency established common pricing consistent with the terms of

⁸ Navient's proposal was ranked seventh of the eight proposals deemed eligible for award. AR, Tab H, PNM at 39.

the RFP. Accordingly, Navient's challenge to the agency's establishment of common pricing is untimely.

The protest is dismissed.

Thomas H. Armstrong
General Counsel