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# Decision

**Matter of:** Amaze Technologies, LLC

**File:** B-419141; B-419141.2; B-419141.3

**Date:** December 22, 2020

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Colonel Patricia S. Wiegman-Lenz, Major Matthew W. Ramage-White, and Captain David J. Ely, Department of the Air Force, for the agency.

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

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## DIGEST

Protest that agency unreasonably deducted points from protester's proposed score is denied where record supports the agency's finding that the protester failed to substantiate a number of points that it claimed in its proposed score.

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## DECISION

Amaze Technologies, LLC, of Herndon, Virginia, protests the issuance of a task order to Apogee Engineering, LLC, of Colorado Springs, Colorado by the Department of the Air Force under fair opportunity proposal request (FOPR) No. 59 for advisory and assistance support services for the Air Force life cycle management center. Amaze argues that the agency ignored information in Amaze's proposal and departed from the stated evaluation criteria when it deducted points from Amaze's proposed score.

We deny the protest.

## BACKGROUND

The FOPR was issued to holders of the General Services Administration's One Acquisition Solution for Integrated Services (OASIS) small business multiple award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 19,

FOPR Eval. Criteria at 3.<sup>1</sup> The FOPR sought advisory and assistance services, including professional acquisition, engineering, scientific, research, financial, and administrative capabilities to support program management of aircraft research, development, production, and lifecycle acquisition and sustainment activities. AR, Tab 5, FOPR Performance Work Statement (PWS) at 11.

The solicitation contemplated the issuance of a cost-plus-fixed-fee, level-of-effort task order with an 11-month base period and four 1-year option periods. AR, Tab 3, FOPR Cover Letter at 1. Award would be made to the highest technically rated offeror with a realistic and reasonable price, based on the evaluation of a technical factor and a cost/price factor. AR, Tab 19, FOPR Eval. Criteria at 1. Under the technical factor, offerors had to assign a score to their proposals for a number of different subfactors identified in the solicitation.<sup>2</sup> *Id.* at 2, 6-13.

The technical volume of each offeror's proposal had to contain sufficient data to substantiate all of the points the offeror assigned to itself. AR, Tab 19, FOPR Eval. Criteria at 13. Offerors could select up to five work samples to submit as substantiating evidence. AR, Tab 7, FOPR Instructions to Offerors at 1. For each work sample, offerors also had to provide a government point of contact. *Id.* The FOPR stated that the agency reserved the right to contact the government point of contact, "for any or all criteria during validation of self-scores." *Id.* at 2. The FOPR informed offerors that the "burden of proof for substantiating points . . . rests solely with the [o]fferor."<sup>3</sup> AR, Tab 19, FOPR Eval. Criteria at 15. The FOPR explained that if the government could not validate an offeror's proposed score on any of the subfactors based on the substantiating evidence provided, the agency "reserves the right to downward adjust the score, potentially all the way down to zero (0) points awarded." AR, Tab 7, FOPR Instructions to Offerors at 2.

With respect to evaluation of proposals, the FOPR explained that the agency would rank the proposals based on the offeror's proposed scores, and then begin to validate the highest-scored proposal. AR, Tab 19, FOPR Eval. Criteria at 2. If the data for the

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<sup>1</sup> The agency's report contained multiple different documents that comprised the FOPR. This decision cites to each separate document as needed.

<sup>2</sup> Offerors inserted their scores for each subfactor on a scoring matrix. AR, Tab 18, FOPR attach. 9, Scoring Matrix. Each subfactor had a weighting factor and a maximum possible number of points an offeror could assign to itself. *See id.* The weighting factor was multiplied against the offeror's proposed score, and the resulting total was the offeror's weighted proposed score for each subfactor. *Id.*

<sup>3</sup> The FOPR included a cross reference matrix that provided for each subfactor examples of the type of documentation an offeror could submit to substantiate its proposed score. AR, Tab 9, FOPR attach. 7, Cross Reference Matrix. The examples included contract documentation, such as award documents, statements of work, or performance work statements, and business system print-outs or screenshots. *Id.*

highest-scored proposal was not substantiated, and another proposal displaced the previous highest-scored proposal, then the agency would begin to validate the proposal with the next highest score. *Id.* This process would continue until the agency identified the proposal with the highest validated score, which would then be evaluated under the cost/price factor. *Id.* If that proposal's cost/price was found to be realistic and reasonable, the agency would make award to that offeror. *Id.*

Six offerors, including Amaze and Apogee, submitted proposals. AR, Tab 37, Fair Opportunity Decision Document (FODD) at 5. Amaze assigned itself 66,742 points, while Apogee assigned itself 64,816 points. *Id.* The agency deducted points from Amaze's proposal under five different subfactors, for a total deduction of 14,664 points; Amaze's final, validated score was therefore 52,078.<sup>4</sup> *Id.* at 6. As a result, Amaze's proposal was no longer the highest-scored proposal and was displaced by another offeror's proposal in the evaluation process. *Id.*

The agency did not deduct any points from Apogee's proposed score, and its final validated score was therefore 64,816. *Id.* at 29. The agency ultimately evaluated Apogee's proposal to be the highest technically rated, and found Apogee's proposed cost/price to be realistic and reasonable. *Id.* at 29. Accordingly, the agency made award to Apogee. *Id.* at 29-30.

On August 31, 2020, the agency notified Amaze that it had made award to Apogee; this protest followed. AR, Tab 38, Notification of Unsuccessful Offeror at 1.<sup>5</sup>

## DISCUSSION

Amaze argues that the agency unreasonably deducted all 14,664 points from Amaze's proposal, and challenges the agency's point deduction under each of the five different subfactors. Amaze asserts that the agency unreasonably ignored information in its proposal and departed from the stated evaluation criteria. Protest at 5. As explained

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<sup>4</sup> The agency deducted points for the following subfactors: 2,400 points for subfactor 3.1.2, number of geographically separated work locations supported; 3,955 points for subfactor 3.1.8, highest number of vacancies in a single contract/task order year as a percentage of the number of positions on a contract/task order with a minimum of 40 contractor man-year equivalents; 3,000 points for subfactor 3.2.3, highest number of positions whose primary purpose is performing management analyst awards support; 5,000 points for subfactor 3.2.4, highest number of positions whose primary purpose is performing communications, navigation, identifications, sensors, and ancillary systems integration engineering support; and 309 points for subfactor 3.4, contractor performance assessment report category ratings over the last five years. See AR, Tab 37, FODD at 12-14.

<sup>5</sup> The awarded value of the task order exceeds \$10 million, and therefore this protest is within our jurisdiction. See 41 U.S.C. § 4106(f).

below, we find that the agency reasonably deducted points from Amaze's proposal and we therefore deny the protest.<sup>6</sup>

#### Allegation that the Agency Should Terminate the Award Because Apogee is An Ineligible Large Business

As a preliminary matter, we first address Amaze's supplemental protest ground, raised after submission of the agency report, that the agency should terminate the award to Apogee because Apogee is a large business, ineligible to receive the task order. Third Supp. Protest at 1. The agency requests dismissal of this ground, asserting that it fails to state a valid factual and legal basis on which to sustain the protest. Req. for Dismissal of Third Supp. Protest at 2-4. For the reasons discussed below, we dismiss this protest ground.

As relevant to this allegation, the deadline for proposal submission was February 24, 2020. AR, Tab 3, FOPR Cover Letter at 3. The agency notified Amaze of the award to Apogee on August 31. AR, Tab 38, Notification of Unsuccessful Offeror at 1. In a letter to the Air Force contracting officer dated September 9, 2020, Amaze alleged that based on publicly available information, Apogee no longer qualified as a small business. Third Supp. Protest at 4. The letter urged the contracting officer to initiate a size protest of Apogee. See *id.* On November 5, the Small Business Administration (SBA) Office of Hearing and Appeals (OHA) affirmed a size determination by the SBA area office that Apogee was a large business under the OASIS small business pool 1. *Size Appeal of Apogee Engineering, LLC*, SBA No. SIZ-6078 at 8. On November 16, Amaze filed its third supplemental protest alleging that the agency should terminate the award to Apogee because the SBA OHA affirmed that Apogee no longer qualified as a small business.

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<sup>6</sup> In its protest, Amaze also asserted that the agency's evaluation was unequal because the agency "seemingly validated most or all the points self-scored by Apogee," which "suggests that the Air Force's evaluation involved disparate treatment." Protest at 17. At the time of its initial protest, Amaze did not know Apogee's proposed score or its final validated score, and we therefore granted the agency's request to dismiss this protest ground as speculative. After the agency report confirmed that the agency validated all of Apogee's proposed score, Amaze raises the same protest ground, arguing that the agency "evaluated Amaze's proposal extremely narrowly but Apogee's proposal with a forgiving eye." Comments & Supp. Protest at 17. The agency again requests that we dismiss this allegation as speculative. Because Amaze's allegation was based solely on the fact that the agency validated all of Apogee's proposed score, and not supported by any other evidence that suggested the agency engaged in disparate treatment, we dismiss this protest ground as speculative. See 4 C.F.R. §§ 21.1(c)(4), 21.5(f).

Amaze argues that the agency abused its discretion in deciding not to terminate the award to Apogee.<sup>7</sup> Response to Agency Req. for Dismissal at 3-5. The agency counters that because there is no statute or regulation requiring it to terminate the award, Amaze has failed to state a legally sufficient basis for protest. Req. for Dismissal of Third Supp. Protest at 4. Based on our review of the record and the applicable regulations, we agree that this allegation fails to state a legally sufficient basis for protest.

The small business regulations state that when an agency receives after award a size determination that the awardee is not an eligible small business, and no OHA appeal is timely filed, the agency must terminate the award. See 13 C.F.R. § 121.1009(g)(2)(i). However, if a timely OHA appeal is filed, and OHA affirms the size determination finding the awardee ineligible, the agency “shall either terminate the contract or not exercise the next option.”<sup>8</sup> *Id.* § 121.1009(g)(2)(iii).

Here, after the agency issued the task order to Apogee on August 31, the SBA area office found that Apogee was not an eligible small business under the OASIS small business pool 1. Apogee timely appealed to the SBA OHA, which affirmed the area office’s size determination. Thus, according to the regulations, the contracting officer had one of two choices: either terminate the task order issued to Apogee, or continue with performance, but not exercise the next option on the task order. The agency chose not to terminate the contract, which it was allowed to do under the applicable regulations. Thus, because the regulations explicitly authorize the agency to take the

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<sup>7</sup> Amaze raises other collateral arguments in its supplemental protest. We have reviewed these arguments and find that none provides a basis on which to sustain this protest.

<sup>8</sup> The agency asserts that 13 C.F.R. § 121.1009 “applies to standard contracts, not task orders under a [multiple award contract]” and that the regulations “distinguish[] [multiple award contracts] and task orders from standard contracts and . . . outline[] the rules applicable to those procurements in 13 C.F.R. § 121.404.” Req. for Dismissal of Third Supp. Protest at 4. We disagree. Section 121.404 addresses the timing for determining the size status of a business concern, and indicates that for multiple award contracts with a duration of more than five years, if a concern recertifies that it is no longer small during the performance period of the contract, the agency can no longer count the options or orders issued to that concern towards the agency’s small business prime contracting goals. *Id.* § 121.404(g)(3).

Section 121.1009 provides the procedures for making a size determination and makes no distinction between multiple award contracts, single-award contracts, or task orders. See 13 C.F.R. § 121.1009. As explained above, section 121.1009 specifically addresses the situation in this protest and provides direction on what agencies may do where, after award of a contract, the SBA OHA affirms an area office size determination that a contractor is an ineligible small business. 13 C.F.R. § 121.1009(g)(2)(iii). Thus, we find that section 121.1009 applies here.

action it has pursued, we dismiss Amaze's supplemental protest alleging that the agency abused its discretion in not terminating the contract because it fails to state a valid legal basis.<sup>9</sup> See 4 C.F.R. § 21.1(c)(4).

### Evaluation of Amaze's Proposal

Amaze challenges the agency's deduction of points under each of the five subfactors. Amaze's proposed score was 66,742, and Apogee's final validated score was 64,816. Thus, if at least 1,927 of the points the agency deducted from Amaze's proposal were reasonably deducted, Amaze's final validated score would fall below Apogee's, even were we to find that all of the remaining point deductions were unreasonable. In this situation, Amaze would not be in line for award. As explained below, we find the agency's deduction of 5,000 points under subfactor 3.2.4 was reasonable and therefore deny Amaze's protest.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria. *VSE Corp.*, B-408936.5, Aug. 25, 2014, 2014 CPD ¶ 262 at 6. A protester's disagreement with the agency's judgment in that regard, without more, does not establish that the agency acted unreasonably. *Id.* at 8; See *Citywide Managing Servs. of Port Washington, Inc.*, B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Under subfactor 3.2.4, offerors were to rate themselves "based on the highest number of positions whose primary purpose is performing [communications, navigation, identifications, sensors and ancillary systems (CNI SAS)] engineering support" in accordance with PWS section 3.6.4. AR, Tab 19, FOPR Eval. Criteria at 10. Section 3.6.4 of the FOPR PWS required the contractor to provide a variety of CNI SAS engineering support, including assisting with avionics integration support and technical direction; systems engineering expertise and assisting as a focal point and technical manager on CNI SAS development efforts; navigation databases expertise and development technical management; and knowledge, guidance, and production of artifacts to support systems integration. AR, Tab 5, PWS § 3.6.4 at 33. Offerors could claim a maximum of 3 positions and 5,000 points for this subfactor. AR, Tab 18, FOPR attach. 9, Scoring Matrix.

Amaze assigned itself the maximum of 5,000 points under this subfactor. To substantiate its score, Amaze used documentation from a task order performed by one of Amaze's proposed subcontractors. See AR, Tab 30, Substantiating Documents for Subfactor 3.2.4. Specifically, Amaze provided a monthly status report that described

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<sup>9</sup> While the agency has not addressed whether it intends to exercise the next option on Apogee's newly awarded task order, because we find that the agency's decision not to terminate the task order was consistent with the applicable regulations, we need not address this issue.

the work three individuals performed on the task order; a staffing chart showing the various employee positions on the task order and the PWS sections to which the positions corresponded; and the PWS for the task order. See *id.* Amaze's proposal stated that this documentation identified three individuals that performed CNI SAS engineering support on the task order.

The agency found that Amaze failed to validate its proposed score for this subfactor because the three individuals used to substantiate the score "held a program management support role, when the requirement asked for CNI SAS [i]ntegration [e]ngineering [s]upport." AR, Tab 36, Amaze Evaluator Worksheet at 34. In particular, the agency found that the documentation identified two of the individuals as "[a]cquisition [p]rogram [m]anagement [s]upport" and performing work under the PWS section titled acquisition program management. *Id.* Furthermore, the agency noted that the staffing chart listed as vacant the position associated with the section of the task order PWS that addressed communication navigation integration engineering support. *Id.* Finally, the agency contacted the government point of contact for this task order, who confirmed that two of the individuals performed certification and accreditation work, but did not support the CNI SAS integration engineering support requirement. *Id.* Accordingly, the agency was unable to validate any of the 5,000 points Amaze claimed, and deducted this amount from the company's score. *Id.*

Amaze contends that the agency's evaluation of this subfactor ignored information in the substantiating documents that showed section 3.2.8.2 of the task order PWS mirrored section 3.6.4 of the FOPR PWS, and that this information should have been sufficient to validate Amaze's score.<sup>10</sup> Protest at 14-15. The agency acknowledges that section 3.2.8.2 of the task order PWS contained similar language to section 3.6.4 of the FOPR PWS, but argues that the documentation does not show that anyone actually performed work under section 3.2.8.2 of the task order PWS. Memorandum of Law (MOL) at 17. We agree. As explained above, the substantiating documentation included a staffing chart that linked the task order positions with a corresponding task order PWS section; for section 3.2.8.2 of the task order PWS, the position was listed as "[v]acant." AR, Tab 30, Substantiating Documents for Subfactor 3.2.4 at 49. The agency's evaluation of Apogee's proposal under this subfactor noted this same vacancy. AR, Tab 36, Amaze Evaluator Worksheet at 34.

On this record, we find that the agency's evaluation was reasonable and supported by the record. We agree with the agency's view that, "the issue was not whether the supporting documentation PWS contained similar language, but whether any of the personnel identified by Amaze actually performed functions under the referenced PWS paragraph." MOL at 17. Amaze's substantiating documentation failed to show this.

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<sup>10</sup> Section 3.2.8.2 of the PWS task order was titled communications navigation integration engineering support and required many of the same engineering support services as section 3.6.4 of the FOPR PWS. Compare AR, Tab 30, Substantiating Documentation for Subfactor 3.2.4 at 75-76 with AR, Tab 5, FOPR PWS § 3.6.4 at 33.

Amaze also asserts that the agency applied an unstated evaluation criterion because it “determined that employees categorized for management could not substantiate engineering tasks.” Comments & Supp. Protest at 12-13. The agency counters that Amaze’s substantiating documents were not sufficient to support the claim that the three individuals performed CNI SAS integration engineering support as their primary purpose, and that its evaluation was reasonable. Based on our review of the record, we agree with the agency and find that the evaluation was reasonable and supported by the record.

The subfactor required the offeror to show up to three positions for which the primary purpose was performing CNI SAS engineering support. The monthly status report in Amaze’s substantiating documents categorized the three individuals as performing “program management.” AR, Tab 30, Substantiating Documents for Subfactor 3.2.4 at 3, 14-24. According to this document, two of the individuals performed tasks such as preparing for, attending, and participating in CNI SAS staff meetings, and updating certain documents related to CNI SAS support, but did not perform much, if any CNI SAS engineering support. *Id.* at 14-18. The staffing chart also stated that the work performed by these two individuals corresponded with a PWS section addressing acquisition program management, not engineering support.<sup>11</sup> *Id.* at 49.

The third individual developed and provided recommendations in the CNI SAS staff meetings, and performed other engineering and integration activities. *Id.* at 18-24. In response to Amaze’s protest, the agency acknowledged that the third individual did perform “some engineering responsibilities to include integration activities” but the individual was not identified in the staffing chart, and thus the agency could not confirm that he primarily performed CNI SAS engineering support. MOL at 16; see *also* AR, Tab 36, Amaze Evaluator Worksheet at 34 (noting that only two of the three individuals were identified on the staffing chart).

Moreover, the agency contacted the government point of contact for this task order, who confirmed that two engineers performed certification and accreditation work, but that Amaze personnel did not support CNI SAS integration engineering support. AR, Tab 36, Amaze Evaluator Worksheet at 34. Amaze argues that the record does not

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<sup>11</sup> Amaze contends that section 3.6.4 of the FOPR PWS “clearly anticipated that management would be a component of the CNI SAS engineering support subfactor.” Comments & Supp. Protest at 12. In this regard, Amaze points to section 3.6.4 requiring the contractor to “assist as a focal point and *technical manager* on CNI SAS development efforts” and to “assist with providing navigation databases expertise and development *technical management*[.]” *Id.* (quoting AR, Tab 5, FOPR PWS § 3.6.4 at 33) (emphasis in original). We disagree. The substantiating documentation showed that these individuals primarily performed program--not technical--management. Moreover, even if management was a component of the CNI SAS support subfactor, the substantiating documentation did not show that these individuals had the primary purpose of performing CNI SAS engineering support, as required by the subfactor.



explain “why a government point of contact would supersede a nearly verbatim PWS experience example.”<sup>12</sup> Protest at 16. However, as explained above, the staffing chart in the substantiating documentation indicated that the position corresponding with the “nearly verbatim PWS experience example” was vacant. We therefore find that it was reasonable for the agency to contact the government point of contact to confirm whether there were any personnel working on the task order whose primary purpose was performing CNI SAS integration engineering support. In sum, we find that based on the information in Amaze’s substantiating documentation and the confirmation from the government point of contact, the agency reasonably concluded that Amaze did not validate its proposed score, and properly deducted all 5,000 points under this subfactor.

Because we find that the agency reasonably deducted 5,000 points from Amaze’s proposal, we need not address any of Amaze’s other arguments contesting the deduction of any remaining points. Even if Amaze could show that the agency’s deduction of the remaining points was unreasonable, it would not be in line for award since its final validated score would be only 61,742, which is below Apogee’s final validated score of 64,816.<sup>13</sup>

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>12</sup> Amaze also argues that the agency deviated from the stated evaluation criteria by seeking information from the government point of contact because Amaze’s proposal on its face contained sufficient documentation to substantiate Amaze’s score. As noted above, the FOPR explicitly stated that the agency reserved the right to seek information from government points of contact “for any or all criteria during validation of self-scores.” AR, Tab 7, FOPR Instructions to Offerors at 2. Accordingly, we find there is no merit to Amaze’s argument.

<sup>13</sup> At any rate, we find that the record supports all of the agency’s point deductions and therefore none of Amaze’s remaining arguments provide a basis to sustain this protest.