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## Decision

**Matter of:** Facility Services Management, Inc.

**File:** B-420102.3

**Date:** March 29, 2022

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### DIGEST

1. Protest challenging agency's evaluation of technical risk in awardee's proposal is denied where the record shows that the agency reasonably assessed technical risk in accordance with the stated evaluation criteria.
  2. Protest that agency failed to perform price realism analysis is dismissed where the solicitation neither expressly required a price realism evaluation nor included language that contemplated the performance of a price realism evaluation.
  3. Protest of agency's best-value tradeoff decision is denied where the award decision was adequately documented, reasonable, and consistent with the solicitation.
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### DECISION

Facility Services Management, Inc. (FSMI) of Clarksville, Tennessee, protests the issuance of a task order to Valiant Government Services, LLC, of Herndon, Virginia, under request for proposal (RFP) No. W912DY-21-F-XXXX, issued by the Department of the Army, U.S. Army Corps of Engineers, for operation and maintenance services supporting medical facilities at Travis Air Force Base, California. FSMI argues that the agency unreasonably evaluated Valiant's technical risk and price, and asserts that the agency's best-value tradeoff analysis was flawed.

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

## BACKGROUND

The agency issued the solicitation on April 26, 2021, to firms holding the Army's Operation and Maintenance Engineering Enhancement (OMEE) multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2; RFP at 1.<sup>1</sup> The RFP sought proposals for providing operation, maintenance, repair, and facility management support for medical facilities at the 60th Medical Group, Travis Air Force Base, California. COS/MOL at 2; Agency Report (AR), Tab 5, Performance Work Statement (PWS) at 2. The RFP contemplated issuance of a fixed-price task order for a base year and three 1-year option periods. RFP at 2.

The task order competition was conducted using the ordering procedures at Federal Acquisition Regulation (FAR) section 16.505. *Id.* at 4. The RFP advised offerors that award would be made to the offeror whose proposal provided the best value and "constitute[d] the most advantageous approach to meeting the services outlined" in the PWS, and warned offerors that award may be made to other than the lowest priced offeror or to other than the highest technically-rated offeror. *Id.* Proposals would be evaluated considering the following four factors: (1) technical and management approach; (2) experience; (3) past performance; and (4) price. *Id.* at 5. All non-price factors, when combined, were equal in importance to price. *Id.*

Under the technical and management approach factor, the solicitation provided a pre-formatted Adobe PDF form and instructed offerors to complete all fields with the required information about their "management and technical approach and organization for providing the type of facility [operation and maintenance (O&M)] Services as identified in the PWS." *Id.* at 4; AR, Tab 14, RFP attach. Vol. III Technical at 1. The solicitation stated that the technical approach narrative would be evaluated for technical feasibility and clarity. AR, Tab 14, RFP attach. Vol. III Technical at 1. As relevant here, the RFP also provided that an "analysis of technical level of effort will be used as part of the evaluation of technical risk." *Id.*; RFP at 5.

For price, the RFP instructed offerors to provide a fixed-price proposal for the base and optional period of performance for the O&M services and optional services identified in the PWS by completing the provided price summary tables with requested information. RFP at 8. The solicitation informed offerors that price would be "evaluated for reasonableness and [would] be considered to the extent to which the prices represent a fair market price" in accordance with FAR subsection 15.404-1(b)(2). *Id.* at 1. As relevant here, in the instructional portion of the price summary tables, the RFP informed offerors that a "comparison between technical level of effort and price will be used as an evaluation of technical risk." AR, Tab 13, RFP attach. Vol. II Price at 1.

The agency received five timely proposals, including from FSMI and Valiant. COS/MOL at 2. Following an evaluation of proposals, which included discussions and clarifications

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<sup>1</sup> Citations to the solicitation are to the RFP provided at tab 2 of the agency report.

through evaluation notices, the agency concluded that Valiant’s proposal provided the best value to the government. *Id.* at 2, 15-16.

Upon receiving notice of its unsuccessful offer and debriefing, FSMI filed a protest with our Office on August 27, 2021, and a supplemental protest on September 2, challenging various aspects of the agency’s evaluation and source selection decision. See *generally*, Protest, B-420102, Aug. 27, 2021; Supplemental Protest, B-420102.2, Sept. 2, 2021. On September 21, the agency notified our Office that it intended to take corrective action by re-evaluating proposals and making a new award decision. Notice of Corrective Action, Sept. 21, 2021, at 1. We dismissed the protest as academic based on the agency’s proposed corrective action. *Facility Services Management, Inc.*, B-420102, B-420102.2, Sept. 28, 2021 (unpublished decision).

After the re-evaluation, the agency assigned the following ratings to FSMI’s and Valiant’s proposals:

	FSMI	VALIANT
<b>Technical and Management Approach</b>	Good	Acceptable
<b>Experience</b>	Very Relevant	Relevant
<b>Past Performance</b>	Substantial Confidence	Satisfactory Confidence
<b>Total Proposed Price</b>	\$86,860,032	\$74,503,992

AR, Tab 25, Source Selection Decision Document (SSDD) at 49-50. With respect to technical risk associated with the technical level of effort, the technical evaluators concluded that Valiant’s proposal “did not pose a risk to the government because [Valiant] met all the staffing requirements of the RFP.” AR, Tab 21, Valiant Technical Evaluation at 1. The price evaluators also concluded that, in evaluating Valiant’s price proposal, the “proposed level of effort does not increase the technical risk.” AR, Tab 24, Price Evaluation at 7.

The agency conducted a best-value tradeoff analysis, where the contracting officer, serving as the source selection authority (SSA), found that FSMI’s higher-rated proposal did not warrant the \$12 million premium and concluded that Valiant’s lower-rated, lower-priced proposal represented the best value. AR, Tab 25, SSDD at 50-51. Based on this conclusion, the agency made award to Valiant. After receiving notice of the agency’s selection decision and a debriefing, FMSI filed this protest.<sup>2</sup>

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<sup>2</sup> The value of the task order is in excess of \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders by Department of Defense agencies under multiple award IDIQ contracts. 10 U.S.C. § 2304c(e); see 4 C.F.R. § 21.5(l).

## DISCUSSION

FSMI's various challenges to the agency's evaluation of the awardee's proposal boil down to the allegation that the agency unreasonably, and contrary to the stated evaluation criteria, failed to assess the technical risk posed by Valiant's low price. First, the protester argues that the agency failed to evaluate such technical risk under both the technical and price factors, as required by the solicitation. FSMI also asserts that the solicitation required the agency to perform a price realism analysis, which the agency failed to carry out. Finally, FSMI alleges that the agency's failure to consider the technical risk posed by the awardee's low price resulted in a flawed tradeoff decision. For the reasons discussed below, we find no merit in FSMI's allegations.<sup>3</sup>

### Technical Risk

FSMI's initial challenge to the agency's evaluation of technical risk in Valiant's proposal was based on its allegation that Valiant failed to propose the minimum staffing and wages required by the solicitation. Protest at 33-34. This allegation, in turn, was based on Valiant's proposed price, which was over \$12 million below FSMI's proposed price and, according to the protester, below cost. *Id.* After reviewing the record produced by the agency, FSMI acknowledges that Valiant proposed the minimum required staffing levels at the required wages, but maintains that the agency still erred in not finding a technical risk with respect to Valiant's low price. Protester's Comments at 2-6.

The agency responds that it reasonably considered Valiant's low price, which included a \$[DELETED] discount, and concluded that the awardee's proposed level of effort did not pose a technical risk because it complied with the minimum required staffing levels. COS/MOL at 37-41.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. *Measurements Int'l. Inc.*, B-404981, July 15, 2011, 2011 CPD ¶ 150 at 3. In this regard, a protester's disagreement with the agency's judgments, without more, does not render an evaluation unreasonable. *See Vizada Inc.*, B-405251 *et al.*, Oct. 5, 2011, 2011 CPD ¶ 235 at 6.

As noted, the solicitation here required the agency to analyze the "technical level of effort [to be] used as part of the evaluation of technical risk" under the technical and management approach factor. RFP at 5. Moreover, while the evaluation criteria for price did not mention the evaluation of risk, the pricing tables provided for the use of the offerors as part of the RFP included a statement that a "comparison between technical

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<sup>3</sup> Although our decision does not address every argument made by the protester, we have fully considered each of them and find that none of the arguments provide a basis to sustain the protest.

level of effort and price will be used as an evaluation of technical risk.” AR, Tab 13, RFP attach. Vol. II Price at 1.

The record shows that, in evaluating the awardee’s proposal under the technical and management approach factor, the technical evaluators found that Valiant’s management plan included a “staffing plan that met the PWS requirements.” AR, Tab 21, Valiant Technical Evaluation at 1. Based on this finding, the agency concluded that “[w]ith regard to technical risk associated with the technical level of effort, [Valiant’s] proposal did not pose a risk to the government because [Valiant] met all the staffing requirements of the RFP.” *Id.* As noted, the protester does not dispute this finding with respect to the awardee’s proposed level of effort. Instead, the protester contends that the agency failed to conduct the required “comparison between technical level of effort and price” in evaluating technical risk as provided for in the pricing table instructions. *Id.*; AR, Tab 13, RFP attach. Vol. II Price at 1.

Contrary to the protester’s allegation, however, the record here shows that the agency analyzed the awardee’s proposed level of effort, not only in its evaluation under the technical and management approach factor, but also in its price evaluation. See AR, Tab 24, Price Evaluation at 7. As part of the latter analysis, the evaluators documented that, “[i]n evaluating [Valiant’s] price proposal, the level [of] effort was reviewed as addressed in this section. The proposed level of effort does not increase the technical risk.” *Id.* In coming to this conclusion, the evaluators also noted as follows:

It was noted that there is a large discount on the labor after all adjustments have been applied. The discount is approximately \$[DELETED] annually. In response to [evaluation notice (EN)] #1, Valiant confirmed the discount is intentional and will not impact the pay of the onsite staff.

*Id.* at 9. Thus, the record demonstrates that the agency assessed the awardee’s proposed level of effort for technical risk in its technical and price evaluations and duly considered the awardee’s significant price discount as part of its analysis.

The protester nevertheless objects to this conclusion, arguing that it was unreasonable for the agency to find that the awardee’s large discount on labor costs did not pose a technical--or performance--risk. Comments at 3-4. In this regard, the protester points to various areas in the awardee’s price proposal where, after the discount is applied, the awardee would be providing the services at a loss or “below-cost.” *Id.*

The agency responds that a price discount below cost does not make a proposal defective, especially in a fixed-price context, as here. COS/MOL at 37-38. Moreover, as noted, the agency confirmed with the awardee during discussions that the below-cost discount was intentional and that it would not affect the wages that would be paid to the personnel performing the work. *Id.* Because the evaluators found that the awardee proposed the required staffing level and confirmed that wages would not be affected by any price discount, the agency contends that it was reasonable to conclude that the

awardee's proposed level of effort did not pose a technical risk even with the substantial price discount. *Id.* at 40-41.

On this record, we find no basis to question the agency's evaluation of the technical risk. As our Office has recognized, a fixed-price order or contract places the risk and responsibility for contract costs and resulting profit or losses on the contractor. *Louis Berger Power, LLC*, B-416059, May 24, 2018, 2018 CPD ¶ 196 at 8; *AGE Logistics Corp.*, B-412049, Dec. 9, 2015, 2015 CPD ¶ 386 at 6. Thus, even assuming that Valiant did submit a proposal that is below anticipated costs, there is no prohibition against an agency accepting below-cost prices on a fixed-price contract. *Id.* The protester's disagreement with the agency's reasoned judgment here, without more, does not render the evaluation unreasonable. See *Vizada Inc., supra*. Accordingly, the protester's arguments in this regard are denied.

To the extent the protester contends that the agency should have found the awardee's allegedly below-cost price to be so low as to pose a performance risk, such argument amounts to a challenge to the agency's price evaluation, which we address next.

#### Price Evaluation

FSMI next contends that the solicitation here contemplated a price realism analysis, but the agency failed to conduct such an assessment. Protest at 37-39; Protester's Comments at 6-9. In fact, as noted, the protester's allegations above--objecting to the agency's evaluation of technical risk--essentially raise a price realism challenge in that the protester primarily argues that "technical risk" exists because the awardee's proposed price is too low for performing the required work. The agency responds that the solicitation did not require it to conduct a price realism review and, in the absence of such requirement, the agency properly evaluated the offerors' price proposals for reasonableness in accordance with the terms of the RFP. COS/MOL at 41-42.

As a general matter, when awarding a fixed-price order or contract, an agency is only required to determine whether offered prices are fair and reasonable. FAR 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted, as opposed to lower. See *Louis Berger Power, LLC, supra*; *Salient Fed. Solutions, Inc.*, B-410174.3, B-410174.4, Apr. 1, 2016, 2016 CPD ¶ 104 at 7. While an agency may conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purpose of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding or risk, offerors or vendors must be advised that the agency will conduct such an analysis. FAR 15.404-1(d)(3); *Advanced C4 Solutions, Inc.*, B-416250.2 *et al.*, Oct. 2, 2018, 2018 CPD ¶ 344 at 5; *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

Absent an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of

technical understanding, and (2) states that a proposal can be rejected or assessed technical risk for offering low prices. *Abacus Tech. Corp.*, B-417749.2, B-417749.3, Mar. 9, 2020, 2020 CPD ¶ 125 at 5; *NJVC, LLC*, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8. Absent such a solicitation provision, agencies are neither required nor permitted to evaluate price realism in awarding a fixed-price contract. *DynCorp Int'l. LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9.

Here, the solicitation established the price evaluation criteria as follows:

Price will be evaluated for reasonableness and will be considered to the extent to which the prices represent a fair market price. [In accordance with (IAW)] FAR 15.404-1(b)(2) - The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price.

RFP at 1. The solicitation instructed offerors to complete the provided price summary tables, which included several detailed instructions and the following statement: “A comparison between technical level of effort and price will be used as an evaluation of technical risk.” *Id.* at 8; AR, Tab 13, RFP attach. Vol. II Price at 1.

According to the protester, a promise to compare technical level of effort and price in evaluating technical risk could only mean that the agency would assess the technical risk for offering low prices, even though the solicitation does not use the term “price realism” or “low price.” *Id.* Comments at 7. We disagree. While the provision does, by its terms, state that the agency would consider price in evaluating technical risk, it does not inform offerors that a proposal can be rejected for offering low prices, which is a requirement for a price realism evaluation. *DynCorp Int'l. LLC, supra*; see *C&T Technologies*, B-418313, Mar. 2, 2020, 2020 CPD ¶ 79 at 6 (denying protest that price realism analysis was required and not performed where the solicitation required some consideration of price as it relates to understanding of requirements, but did not inform offerors that a proposal can be rejected for offering low prices).

Here, we find that the solicitation did not include an explicit price realism provision and conclude that a price realism analysis was not required by the terms of the solicitation. The solicitation did not state, expressly or otherwise, that the agency would evaluate whether offerors’ proposed prices were realistic, *i.e.*, too low for the solicited task order requirements, or state that the agency could reject a proposal or assess a technical risk because the offeror’s proposed prices were too low. See *generally*, RFP.

Where there is no relevant evaluation criterion pertaining to price realism, a determination that an offeror’s price on a fixed-price order or contract is too low generally concerns the offeror’s responsibility, *i.e.*, the offeror’s ability and capacity to successfully perform the order or contract at its offered price. See *Louis Berger Power, LLC, supra*; *Milani Constr., LLC*, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4-5. Our Office generally does not review an agency’s affirmative responsibility determination, absent allegations not at issue in this protest. 4 C.F.R. § 21.5(c). Thus, FSMI’s claims that Valiant submitted an unrealistically low price--or even that the proposed price is

below the cost of performance--fails to allege a cognizable ground for protest and therefore is dismissed. 4 C.F.R. §§ 21.1(c)(4) and (f); *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

### Trade-off Analysis

Finally, FSMI challenges the agency's best-value tradeoff decision, arguing that the agency failed to meaningfully assess the relative merits and differences in proposals. Protest at 21-24; Protester's Comments at 10-15. The protester bases this argument primarily on its allegation that the agency failed to account for the technical risk presented by the awardee's below-cost proposal in its tradeoff analysis. *Id.*

Where solicitations provide for award on a "best-value" tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price; the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. *SBG Tech. Sols., Inc.*, B-410898.9, B-410898.12, June 21, 2016, 2016 CPD ¶ 199 at 5. Where a price/technical tradeoff is to be made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs, including the benefits associated with additional costs. FAR 15.308; *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13.

Further, while the source selection decision must be adequately documented, there is no requirement to document every consideration factored into the tradeoff decision, nor is there a requirement to quantify the benefits provided by a higher-priced higher-rated proposal. See *Terex Gov't. Programs*, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176 at 3; *SBG Tech. Sols., Inc.*, *supra*. Rather, the requirement for adequate documentation is met where the record establishes that the selection official was aware of the relative merits and costs of the competing proposals. *General Dynamics Information Tech., Inc.*, B-415568, B-415568.2, Jan. 25, 2018, 2018 CPD ¶ 63 at 12; *Wyle Labs., Inc.*, B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11.

As stated above, the RFP provided for award of the task order to the offeror whose proposal provided the best value considering all factors, where all non-price factors, when combined, were equal in importance to price. RFP at 4. The RFP also reserved the government's "right to perform rigorous tradeoff analysis of the highest technically rated higher priced proposal to analyze and determine whether the perceived benefits of the higher priced proposals shall merit the additional cost." *Id.* at 8.

In comparing the protester's technically higher-rated proposal with the awardee's lower-priced proposal, the SSA summarized the findings of the technical and price evaluations and concluded as follows:

I thoroughly considered the strengths of [FSMI's] technical proposal related to [DELETED], [DELETED], inclusion of [DELETED], inclusion of



[DELETED], and [DELETED] in conjunction with [FSMI's] more relevant experience and higher past performance confidence rating than Valiant's to determine whether they warranted paying the higher price. After doing so, I determined that these strengths are not sufficient to justify paying additional \$12,356,040 even in combination with more relevant experience and a higher past performance confidence.

SSDD at 51. The SSA also specifically noted that the awardee's lower price "includes a [DELETED]% discount that is equivalent to \$[DELETED]." *Id.* at 50. Based on this analysis, the SSA concluded that Valiant's proposal offered the best value. *Id.* at 51.

On this record, we find that the agency's tradeoff analysis was adequately documented, reasonable, and consistent with the terms of the solicitation. The record establishes that, in making the best-value tradeoff decision, the SSA performed a comprehensive review and comparison of the competing proposals' potential benefits as well as their respective prices. As noted above, the SSA recognized FSMI's multiple strengths and higher ratings for non-price factors in comparison with the awardee's one strength and lower non-price ratings, as well as the prices associated with both proposals.

An agency may properly select a lower-rated, lower-priced proposal if the agency reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified. *See Aegis Def. Servs., Ltd.*, B-403266 *et al.*, Oct. 1, 2010, 2010 CPD ¶ 238 at 10. Here, where price was stated to be equally important as all non-price factors combined, we have no basis to question the SSA's reasoned conclusion that the benefits associated with FSMI's higher-rated proposal did not warrant a \$12 million price premium. The protester's general disagreement with the SSA's judgment in this regard does not demonstrate that the tradeoff analysis was unreasonable. *SBG Tech. Sols., Inc.*, *supra* at 7; *Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Moreover, as discussed above, we find no merit to FSMI's challenges to the agency's technical risk assessment based on the awardee's price discount. The SSA's failure to consider any such risk, therefore, does not form a basis to question the reasonableness of the agency's best-value tradeoff decision. *See C&T Technologies*, *supra* at 8 (finding no basis to question the reasonableness of agency's tradeoff decision where alleged challenges to agency's evaluation were found to be without merit).

The protest is dismissed in part and denied in part.

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General Counsel