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# Decision

**Matter of:** Teya Enterprises, LLC

**File:** B-420907

**Date:** October 24, 2022

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Edward T. DeLisle, Esq., and Andrés M. Vera, Esq., Offit Kurman, P.C., for the protester.

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## DIGEST

Protest challenging the agency’s evaluation of the awardee’s proposal is denied because the evaluation was reasonable and consistent with the solicitation.

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## DECISION

Teya Enterprises, LLC, a small business of Anchorage, Alaska, challenges the award of a contract to Main Building Maintenance, Inc. (MBM), a small business of San Antonio, Texas, under request for proposals (RFP) No. W81K04-21-R-0004, issued by the Department of the Army for healthcare environmental cleaning and related services. Teya challenges the agency’s evaluation of the awardee’s proposal.

We deny the protest.

## BACKGROUND

On October 15, 2021, using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the solicitation as a total small business set-aside. Agency Report (AR), Tab 11, RFP at 1.<sup>1</sup> The solicitation sought proposals for the provision of “healthcare environmental cleaning and related services” at William Beaumont Army Medical Center, Fort Bliss, Texas and a few dozen other related medical treatment facilities in Texas and New Mexico totaling 1,367,990 square feet. *Id.* at 73-74. In providing the cleaning services, the solicitation advised that the contractor will be required to “prioritize infection control while optimizing cleaning practices” to support the

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<sup>1</sup> Our citations are to documents’ Adobe PDF pagination.

agency’s “mission of providing quality healthcare in safe, hygienic, and aesthetically-pleasing” facilities. *Id.* at 74.

The solicitation contemplated award of an indefinite-delivery, indefinite-quantity (IDIQ) contract under which fixed-price task orders will be issued during a 1-year base period and four 1-year option periods. RFP at 30. The solicitation established that the minimum guarantee under the resulting IDIQ contract will be \$1,500 while the maximum value of orders placed during the 5-year ordering period cannot exceed \$86 million. *Id.* The solicitation provided that award would be made on a lowest-priced, technically acceptable basis, taking into consideration offerors’ proposed technical approaches, past performance, and price. *Id.* at 216-217.

The agency received 13 initial proposals, after review of which it established a competitive range consisting of four offerors, including Teya and MBM. AR, Tab 45, Source Selection Decision (SSD) at 4, 7-8. Based on final proposal revisions, the evaluators assessed Teya’s and MBM’s proposals as follows:

	<b>Teya</b>	<b>MBM</b>
<b>Technical Approach</b>	Acceptable	Acceptable
<b>Past Performance</b>	Acceptable	Acceptable
<b>Price</b>	\$51,793,512.50	\$41,858,003.47

*Id.* at 8. Based on the evaluations and a consideration of proposals, the contracting officer selected for award MBM’s lowest-priced, technically acceptable proposal. *Id.* at 12.

After receiving notice of award decision and a debriefing, Teya filed this protest. See *generally* AR, Tab 46, Unsuccessful Offeror Notice; Tabs 48-50, Post-Award Debriefing Materials.

## DISCUSSION

The protester challenges the agency’s evaluation of the awardee’s proposal.<sup>2</sup> Specifically, Teya maintains that the agency unreasonably evaluated the awardee’s

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<sup>2</sup> In its protest, Teya also challenged the adequacy of the debriefing provided by the agency and maintained that the awardee is not a small business. Protest at 10-11. Teya acknowledged, however, that neither challenge provided an independent basis of protest cognizable in our bid protest forum, and that Teya was presenting these arguments “instead [to] serve as further evidence of the Agency’s failure to conduct its evaluation in accordance with the terms of the Solicitation and the FAR.” *Id.* at 11 *citing e.g. Virtual Med. Group, LLC*, B-418386, Mar. 25, 2020, 2020 CPD ¶ 113 at 3 n.4 and 4 C.F.R. § 21.5(b)(1); see also Resp. to Req. for Dismissal at 1 (indicating that Teya did not view these arguments as independent protest grounds). Further, Teya initially challenged the agency’s conduct of discussions as unequal. Protest at 18. In its

past performance, arguing that because MBM failed to submit recent and relevant past performance references, none of MBM's references should have been considered. Protest at 12-13. Further, Teya contends that the agency's price evaluation was flawed because it failed to find the awardee's price to be unrealistically low.<sup>3</sup> Teya makes additional arguments that we do not address below, though we have reviewed them all and conclude that none provides a basis to sustain the protest.<sup>4</sup>

#### Awardee's Past Performance

Teya contends that "the Agency impermissibly waived or relaxed the recency and relevancy requirements" of the solicitation in its evaluation of MBM's past performance. Protest at 12. Specifically, Teya argues that two of MBM's three past performance references failed to meet the solicitation's definition for relevancy. *Id.* at 12-13. Thus, Teya maintains, the agency should have evaluated MBM's past performance as unacceptable. *Id.* at 13. The agency responds that Teya "is trying to make the Solicitation's evaluation criteria more restrictive." Memorandum of Law (MOL) at 10. We agree.<sup>5</sup>

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of

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comments responding to the agency report, however, Teya withdrew this argument. Comments at 1, 10. Accordingly, we do not discuss these allegations further.

<sup>3</sup> Prior to submission of its report responding to the protest, the agency requested that our Office dismiss each of Teya's specified protest grounds. Req. for Dismissal at 10-24. The agency's request, however, largely argued the merits of the protest grounds. As such, we declined to dismiss Teya's protest challenges. Electronic Protest Docketing System Nos. 18 and 21.

<sup>4</sup> For example, Teya challenged the agency's evaluation of MBM's proposal under the technical approach factor, arguing that the evaluation is not documented adequately to demonstrate how or why MBM's proposal satisfied the solicitation's technical requirements. Protest at 14-15; Comments at 6-8. While source selection decisions must be documented and have a reasonable basis, an agency is not necessarily required to document all "determinations of adequacy." *Allied Tech. Group, Inc.*, B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13. Contrary to Teya's assertions, here the record reflects that the evaluators identified areas of technical concern in both Teya's and MBM's proposals, which the agency then discussed with both offerors. *See generally e.g.*, AR, Tab 22, Teya 1st Discussion Letter; Tab 23, MBM 1st Discussion Letter. The fact that the agency did not additionally document all determinations of adequacy does not render the technical evaluation unreasonable or inadequately documented. *Allied Tech. Group, Inc.*, *supra* at 13.

<sup>5</sup> Teya also argues that one of MBM's references should not have been deemed recent. Protest at 13. While not discussed herein, we have considered this argument and conclude it provides no basis to sustain the protest.

discretion, which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 6. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Id.*; *Carothers Constr., Inc.*, B-403382, Oct. 28, 2010, 2010 CPD ¶ 268 at 6.

As relevant here, the solicitation required offerors to submit past performance references for up to three recent and relevant contracts. RFP at 192. The solicitation defined relevant references as those which were performed "in a medical facility similar in size to or larger than [the William Beaumont Army Medical Center] performing services similar in scope and complexity to those specified" in the solicitation. *Id.* at 192, 218. The solicitation established that the agency would conduct a two-step past performance evaluation: first, the agency would evaluate an offeror's references to determine if they were recent and relevant; second, the agency would evaluate, for quality, only those references deemed recent and relevant. *Id.* at 217-218.

The record reflects that MBM submitted one reference for healthcare housekeeping services performed at Irwin Army Community Hospital, Fort Riley, Kansas; a second reference for healthcare aseptic management services performed at eight different Air Force locations under an IDIQ contract; and a third reference for healthcare aseptic management services performed at fifteen Air Force medical treatment facilities throughout the northwestern United States under an IDIQ contract. AR, Tab 16, MBM Past Performance Proposal at 1-3. The record shows that the evaluators considered all three references to be recent, as they were performed within the timeframe specified in the RFP. AR, Tab 20, MBM Past Performance Evaluation at 3. The evaluators also considered all three references to be relevant, noting that the references involved the same or similar type of services as those contemplated by the solicitation, and were performed at facilities ranging in size from 900,000 to 2.8 million square feet. *Id.* Further, the evaluators noted that two of the references were for performance at multiple facilities under a single IDIQ contract. *Id.* at 2.

Teya contends that the agency should not have deemed MBM's first reference relevant because it was performed in a medical facility of approximately 900,000 square feet, which Teya maintains is not similar in size to the 1,367,990 square feet of facilities required to be serviced under the solicitation. Protest at 12. Teya argues that the size difference is too vast to be considered similar, and that the agency's evaluation "render[ed] the project size portion of the Relevancy definition entirely meaningless." Protest at 12-13; Comments at 3.

The agency explains that the evaluators "did not apply a strict square footage requirement in determining whether a medical facility was similar in size," as the solicitation did not require such an application. Contracting Officer's Statement (COS) at 5. The agency represents that while the approximately 900,000 square feet facility serviced under MBM's first reference contract was "somewhat smaller" than the William

Beaumont Army Medical Center, it was reasonable for the evaluators to conclude the reference was “sufficiently similar to the instant effort.” *Id.* The agency also notes that the evaluators determined relevancy based not on facility size alone, but on a combination of the type and complexity of services performed as well as facility size, as required by the solicitation.<sup>6</sup> *Id.*; see also RFP at 218; AR, Tab 20, MBM Past Performance Evaluation at 2-3. Based on the record before us, we find the agency’s conclusion reasonable.

Similarly, Teya argues that the agency should not have deemed MBM’s third reference relevant because it was not performed at a facility of similar size. Protest at 13. Rather, the contract was performed at 15 different facilities totaling approximately 2.8 million square feet, of which the largest facility was only 391,540 square feet. *Id.* Teya also contends that this reference should not have been deemed relevant because it was not performed at a single facility, in contravention of the solicitation’s requirement for past performance references to be performed at “a medical facility.” *Id.*; Comments at 4. The agency responds that the solicitation did not require past performance references to be performed in a single facility. COS at 6; MOL at 13.

The terms of the solicitation do not support Teya’s argument that it was objectionable for the agency to determine relevancy based on the aggregate size of the 15 facilities serviced under MBM’s third reference. Our review of the record indicates that the solicitation here is, itself, for work to be performed at multiple different facilities, which together, total 1,367,990 square feet. RFP at 73-74. Contrary to Teya’s contentions there is no single facility of such size to be serviced under the solicitation. See RFP at 74 (estimating the total square footage as 1,367,900 for the William Beaumont Army Medical Center *and* the multiple other medical facilities to be serviced under the solicitation) (emphasis added). We find it more than reasonable for the agency to have considered a contract for the performance of cleaning services performed across multiple facilities totaling 2.8 million square feet relevant to the effort here, which also requires cleaning services to be performed across multiple facilities totaling approximately half this square footage.

In sum, Teya’s arguments regarding the relevancy of MBM’s past performance references ignore the solicitation’s requirements and evaluation criteria and reflect

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<sup>6</sup> Teya argues that the contemporaneous evaluation record does not “explain *how* or *why*” MBM’s references satisfied the solicitation’s relevancy and recency requirements, and that the agency’s explanation in its report responding to the protest is a *post-hoc* rationalization to which our Office should accord no weight. Comments at 3. Our decisions consistently have explained that we will not limit our review to contemporaneous evidence, but also will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, when those explanations are credible and consistent with the contemporaneous record. *ERC, Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 9. Here, we find the agency’s explanation of its past performance evaluation both credible and consistent with the contemporaneous record.

nothing more than disagreement with the evaluators' judgments. Such disagreement, without more, however, is insufficient to render the agency's judgments unreasonable. Accordingly, we deny this protest ground. See e.g., *Carothers Constr., Inc.*, *supra* at 7-8 (denying protest where protester disagreed with agency's judgment that renovation of approximately 20,000 square feet of hospital administrative offices and gift shop space was not sufficiently similar to requirement for renovation of approximately 100,000 square feet of specialized laboratory space).

Moreover, we note that even if Teya were correct, and none of MBM's past performance references should have been evaluated for quality because they failed to meet the solicitation's recency and relevancy criteria, this would not have resulted in MBM's proposal being rated unacceptable, as Teya contends. See MOL at 13-15. Rather, the solicitation provided that if an offeror had no record of recent and relevant past performance the offeror's unknown past performance "shall be considered acceptable." RFP at 218; see also *id.* at 192. Accordingly, had all three of MBM's been deemed unevaluable for quality purposes, the firm's proposal would still have been rated as acceptable under the past performance factor. Thus, Teya cannot establish any possibility of competitive prejudice even if it were to prevail in its challenge to the agency's evaluation of the awardee's past performance. Competitive prejudice is an essential element of a viable protest, and when the record establishes no reasonable possibility of prejudice our Office will not sustain a protest even if a defect is found in the procurement. *Trandes Corp.*, B-411742.4, Feb. 22, 2016, 2016 CPD ¶ 61 at 6.

#### Awardee's Price

Teya also challenges the agency's evaluation of the awardee's price. Protest at 15-18. Teya maintains that the agency chose to conduct a price realism analysis, but failed to do so in a reasonable manner. *Id.* at 16-18. Teya contends that had the agency conducted a reasonable price realism analysis, it would have found MBM's proposed price to be unrealistically low. *Id.* For its part, the agency represents that the solicitation did not require--and the agency did not perform--a price realism analysis. COS at 9-10; MOL at 20-23. We agree.<sup>7</sup>

As a general matter, when, as here, an agency seeks to award a fixed-price contract it is only required to determine whether proposed prices are fair and reasonable. FAR 15.402(a). Price realism--whether an offeror's proposed price is too low--need not necessarily be considered in evaluating proposals for the award of a fixed-price contract, because such contracts place the risk of loss on the contractor rather than the government. *Patronus Systems, Inc.*, B-418784, B-418784.2, Sept. 3, 2020, 2020 CPD ¶ 291 at 4. An agency may include in a solicitation, however, a provision that provides

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<sup>7</sup> In addition to challenging the agency's evaluation of the awardee's price, Teya initially argued that the agency evaluated offeror's proposed prices in a disparate manner. Protest at 15-18. In its comments responding to the agency's report, Teya withdrew this protest argument. Comments at 1, 8 n.4, 10. As such, we do not discuss this argument further.

for a price realism evaluation for the purpose of assessing whether an offeror's low price reflects a lack of understanding of the contract requirements or the risk inherent in the offeror's proposal. *Id.* Here, the solicitation included a provision establishing that while the agency did not intend to conduct a price realism analysis, it could choose to do so for purposes of "determining an offeror's understanding of the solicitation's requirements or assessing risk associated with an offeror's proposal." RFP at 218-219. In support of its contention that the agency performed a price realism analysis, Teya points to the agency's conduct of discussions. Protest at 16; Comments at 8-10.

Specifically, Teya claims that the evaluators' assessment of a significant weakness in Teya's proposal for failing to provide a sufficient number of full-time equivalent (FTEs) employee work hours indicates that the agency "was concerned that Teya's price was too low because it did not utilize the number of FTEs the Agency expected." Protest at 16. Teya argues that "[t]his is the very essence of a price realism analysis as it considers whether Teya's price indicated an 'understanding of the solicitation's requirements' and in response the [agency] acted to assess 'risk inherent' in Teya's proposal." *Id.* Similarly, Teya maintains that the agency's assessment of weaknesses in MBM's proposal for failing "to 'demonstrate compliance and understanding' with the RFP," further indicate that the agency engaged in a price realism analysis. Comments at 8-9.

The record reflects that, as part of discussions, the agency expressed concerns with both Teya and MBM regarding the staffing chart component of the firms' proposed technical approaches. COS at 9-10; AR, Tab 22, Teya 1st Discussion Letter at 6-7; Tab 23, MBM 1st Discussion Letter at 8-9. The record does not support Teya's contention that the agency conducted a price realism analysis. To the contrary, the record plainly indicates that the agency neither contemplated nor performed a price realism analysis, as part of the evaluation of proposals. See Tab 43, Price Analysis at 1 ("The [contracting officer] has determined that price realism analysis is unnecessary for the submitted proposals."); Tab 44, Pre-Negotiation Objective Memorandum at 24 ("The Government has determined that price realism is not needed for the submitted proposals.").

Relevant here, the solicitation required offerors to submit as part of their technical proposals a completed staffing chart template indicating the number of FTEs "proposed by labor category for each shift by building." RFP at 191. The staffing chart template included over 140 different categories for which offerors were required to propose a number of FTEs. *Id.* at 166-172. With respect to the evaluation of Teya's proposal, the record shows that the evaluators assessed a significant weakness in Teya's initial proposal because Teya's staffing chart did not include a sufficient number of FTEs for [DELETED] of the more than 140 different categories. AR, Tab 22, Teya 1st Discussion Letter at 6-7. Specifically, the evaluators were concerned that the number of proposed FTEs for those [DELETED] areas was not in accordance with the requirements set forth

in the performance work statement for those particular areas.<sup>8</sup> *Id.* Similarly, the evaluators assessed a significant weakness in MBM's initial proposal because its staffing chart also did not include a sufficient number of FTEs for [DELETED] of the over 140 different categories. AR, Tab 23, MBM 1st Discussion Letter at 8-9.

Contrary to Teya's contentions, the evaluators did not assess weaknesses in, or express concerns with, either Teya's or MBM's proposals based on an overall lack of understanding of the solicitation requirements or on the total number of FTEs proposed by either offeror. Rather, the evaluators expressed concerns that the offerors did not understand the requirements of a few specific portions of the solicitation based on the number of FTEs proposed by each offeror for those discreet service areas. AR, Tab 22, Teya 1st Discussion Letter at 6-7 (noting, for example, "offeror failed to sufficiently demonstrate compliance and understanding of PWS 5.6.2 staffing requirements"). In our view, it is clear that the agency's reference to Teya failing to sufficiently demonstrate "compliance and understanding" are not judgments that the protester's proposed price is unrealistic. Rather, they are an elaboration on the agency's view that the protester's technical approach had a significant weakness with regards to staffing [DELETED] labor categories. In this instance, it is the proposed staffing levels for those labor categories which are unrealistically low, not the proposed price.

As our Office has explained, the purpose of a price realism evaluation is to determine whether proposed prices are so low that they are not realistic for the work to be performed, reflect a lack of clear understanding of the requirements of the solicitation; or are not consistent with the methods of performance described in the vendor's technical proposal. FAR 15.404-1(d); *Octo Consulting Group, Inc.*, B-416097.3, B-416097.4, Sept. 24, 2018, 2018 CPD ¶ 339 at 8. In other words, a price realism evaluation assesses whether a vendor is likely to be able to execute its proposed technical approach in the manner described at its proposed price. *Id.*

On this record, we conclude that the agency's evaluation related to the offerors' proposed technical approaches for the requirements of specific tasks, rather than to the offerors' overall proposed level of effort as being too low. Nor, for that matter, do we find any suggestion in the record that the agency concluded that the protester will be unable to retain the staff it proposed at the prices it proposed, or would otherwise, due to its pricing, be unable to execute its proposed technical approach. Accordingly, we

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<sup>8</sup> In this regard, the evaluators were concerned that Teya had not proposed a sufficient number of FTEs in [DELETED] categories (identified by buildings and shifts) to adequately meet the requirements of section 5.6.2 of the performance work statement, which described healthcare environmental cleaning of specified areas such as operating rooms, sterile processing department, and labor and delivery. AR, Tab 22, Teya 1st Discussion Letter at 6-7.



find that the agency did not conduct a price realism analysis.<sup>9</sup> See *e.g. Octo Consulting Group, Inc., supra* at 8-9 (denying allegation that agency conducted a price realism analysis where the agency found that there were technical performance risks associated with only specific aspects of the protester's staffing approach).

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>9</sup> As the agency did not perform--nor was it required to perform--a price realism analysis, we need not address Teya's contention that a reasonable price realism analysis would have concluded that MBM's proposed price was unrealistically low.