



# Decision

**Matter of:** MSK TriTech Group, LLC

**File:** B-421814

**Date:** October 3, 2023

## 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.

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David A. Machado, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging evaluation of protester’s proposal as ineligible for award is denied where evaluation was reasonable, consistent with the solicitation, and did not employ unstated evaluation criteria.

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## DECISION

MSK TriTech Group, LLC (MSK), a small business of Stafford, Virginia, protests the issuance of a task order to QED Systems, LLC (QED), a small business of Aberdeen Proving Ground, Maryland, under request for proposals (RFP) No. RS3-22-0018. The Department of the Army issued the RFP for system engineering and technical assistance support and sustainment engineering services. The protester challenges the agency’s evaluation of its proposal as technically unacceptable and ineligible for award.

We deny the protest.

## BACKGROUND

On August 3, 2022, using the procedures of Federal Acquisition Regulation subpart 16.5, the agency issued the solicitation to small business holders of its Army Contracting Command-Aberdeen Proving Ground’s Responsive Strategic Sourcing for Services indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 1; Agency Report (AR) Tab 7, RFP

at 1.<sup>1</sup> The solicitation sought system engineering and technical assistance and sustainment engineering support services in support of the Program Manager Force Protection Systems (PM FPS) mission. RFP at 1. The PM FPS mission “develops, acquires, procures, fields, and sustains persistent surveillance, perimeter security, and installation entry systems that enhance intelligence, surveillance, and reconnaissance, target acquisition, force protection, and physical security capabilities, enabling rapid situational understanding and integrated operations” for U.S. military operations. AR, Tab 10, Performance Work Statement (PWS) at 5.

The solicitation contemplated issuance of a single task order with cost-plus-fixed-fee contract line item numbers (CLINs) for labor as well as cost with no fee CLINS for other direct costs (e.g., travel). RFP at 2. The contemplated task order would have a 1-year base period and four 1-year option periods. *Id.* The solicitation provided for award to be made on a best-value tradeoff basis, and established the following four evaluation factors: (1) personnel credentials, experience, and qualifications (personnel); (2) technical ability; (3) project management plan; and (4) cost/price. *Id.* at 10. The solicitation explained that the technical ability and project management plan factors would be evaluated on an acceptable/unacceptable basis. *Id.* In contrast, the personnel factor would be adjectivally rated as outstanding, good, acceptable, marginal, or unacceptable, and would be considered in the best-value tradeoff with cost/price. *Id.* at 10-11. Further, the solicitation set forth that an offeror “must receive an Acceptable or better rating in all non-price factors to be eligible for award.” *Id.* at 10. With respect to cost/price, the agency would evaluate for reasonableness and realism. *Id.*

The agency received six proposals, including the second highest-priced proposal submitted by the protester and the highest-priced proposal submitted by the awardee. AR, Tab 23, Award Decision at 2. The evaluators assessed the protester’s and awardee’s proposals as follows:

	<b>MSK</b>	<b>QED</b>
<b>Personnel</b>	Outstanding	Outstanding
<b>Technical Ability</b>	Unacceptable	Acceptable
<b>Project Management Plan</b>	Acceptable	Acceptable
<b>Cost/Price</b>	\$98,684,691.00	\$106,644,019.58

*Id.* at 5. As with MSK’s proposal, the evaluators assessed the remaining four offerors’ proposals with a rating of unacceptable under the technical ability factor. *Id.* As a result, QED’s highest-priced proposal was the only proposal to receive a rating of acceptable or better under each of the non-price factors, making it the only proposal eligible for award. *Id.*; see also RFP at 10. Accordingly, the agency selected QED’s proposal as the best value to the government without conducting a tradeoff. AR, Tab 23, Award Decision at 28-29.

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<sup>1</sup> We use the Adobe PDF pagination of documents in the record for our citations. Also, we refer to solicitation amendment 2 for our citations to the RFP.

Following notification of the agency's award decision and receipt of a debriefing, MSK filed this protest with our Office.<sup>2</sup>

## DISCUSSION

As noted above, the evaluators assigned MSK's proposal a rating of unacceptable under the technical ability factor. The evaluators based the assigned rating on their assessment of zero strengths, sixteen weaknesses, five significant weaknesses, and seven deficiencies in MSK's proposal. AR, Tab 22, MSK Evaluation at 8. The protester challenges this evaluation, primarily arguing that the agency evaluated in a manner inconsistent with the solicitation by employing unstated evaluation criteria related to the subtasks identified within the main task areas set forth in the PWS. Protest at 9-10. The agency responds that it did not employ unstated evaluation criteria, but rather evaluated consistent with the terms of the solicitation, as the subtasks were encompassed within the PWS's main tasks. COS/MOL at 3. Thus, the crux of this protest is a disagreement over the interpretation of the solicitation related to the applicable evaluation criteria's relationship to the PWS's main task and subtask areas. For the reasons explained below, we find the agency's interpretation reasonable and the protester's interpretation unreasonable.

When reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Cognosante MVH, LLC*, B-418986 *et al.*, Nov. 13, 2020, 2021 CPD ¶ 3 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria and with applicable procurement statutes and regulations. *Candor Solutions, LLC*, B-417950.5, B-417950.6, May 10, 2021, 2021 CPD ¶ 199 at 5. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an agency acted unreasonable. *Id.*

At issue here is the following solicitation language: "Proposals shall describe the offeror's proposed approach to support the task areas under PWS Section 4. The offeror shall address each task area (e.g., PWS 4.1 Program Management)." RFP at 5. The solicitation further required that offerors submit "a cross reference table in proposals to identify where each PWS Section 4 task area is addressed." *Id.* With respect to evaluation, the solicitation provided that in order to achieve a rating of acceptable for the technical ability factor an offeror's "proposal content shall demonstrate an understanding of the six (6) task areas (PWS Section 4), a feasible method to execute the tasks and the expected outcome, and subcontractor arrangements." *Id.* at 12. Additionally, the PWS established that the successful contractor: "shall provide services inclusive of, but not limited to, the specific tasks identified [in] PWS paragraphs 4.1-4.6.3. These tasks include Program Management,

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<sup>2</sup> The value of the protested task order exceeds \$25 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 3406(f)(1)(B).

Engineering Support, Logistics Management Support, Operations Management, Business/Financial Management, and Foreign Military Sales Support.” PWS at 23. Each of the PWS sections--4.1 through 4.6--included multiple subparagraphs (e.g., 4.1.1, 4.1.2, 4.6.3, etc.). See *generally id.* at 23-36.

In addition to the referenced solicitation language, the agency provided answers to questions submitted by prospective offerors. One of the question and answer (Q&A) exchanges is relevant here. In question 77 a prospective offeror noted that section 4 of the PWS was composed of 14 pages of narrative requirements encompassing six “major categories,” “not less than 37 separate outline level-3 subsections,” and at least “150 instances of ‘shall’ followed by a description of specific tasking,” yet the solicitation’s proposal instructions limited offerors to 20 pages to address both the technical ability factor (PWS section 4) and the program management plan factor. AR, Tab 5, RFP Q&A at 19. The prospective offeror then posited that “[t]his requirement could result in rejection of an offeror’s [proposal] for any one of the 180 missed possibilities (i.e., 150 ‘shall statements’ and 30 level-3 outline topics).” *Id.* Based on these observations, the prospective offeror asked four questions. *Id.* at 20.

First, the prospective offeror asked: “How may explicit ‘shall statement’ omissions will trigger a rejection of an offeror’s [proposal]?” AR, Tab 5, RFP Q&A at 20. The agency responded: “The number of explicit ‘shall statement’ omissions to trigger rejection of an offeror’s [proposal] is not defined.” *Id.* Additionally, the agency indicated the solicitation would be updated to increase the page limitation from 20 pages to 30 pages for offerors to address both the technical ability and program management plan factors. *Id.* Second, the prospective offeror asked: “How many explicit ‘level-3 outline topics’ (e.g., 4.1.1-4.1.7, 4.2.1-4.2.9, 4.3.1-4.3.13, 4.4.1-4.4.4, and 4.5.1-4.5.5) omissions will trigger rejection of an offeror’s [proposal]?” Again, the agency responded that the number of omissions that would trigger rejection was not defined, and the Army noted the increase in the proposal page limit. *Id.*

Third, the prospective offeror asked: “Will the Government identify the specific ‘shall statement’ requirement(s) and/or specific elements of major categories and level-3 sub-topics that, if omitted, will result in rejection of an offeror’s [proposal]?” AR, Tab 5, RFP Q&A at 20. The agency responded: “The specific ‘shall statement’ requirement(s) and/or specific elements of major categories and level-3 sub-topics that, if omitted, will result in rejection of an offeror’s [proposal] is not defined.” *Id.* Fourth, the prospective offeror asked: “Will the Government confirm that in light of the page constraints, expectations for the [proposal] are ‘high level’ in terms of response applicable to the 6 major subcategories (4.1, 4.2, 4.3, 4.4, 4.5, and 4.6) indicated in the PWS and any individual omission resulting from page constraints in an offeror’s response that otherwise addresses the 6 major categories will NOT result in a rejection of an offeror’s [proposal].” *Id.* The agency did not directly answer this question, responding instead that the solicitation would be updated to increase the proposal page limit from 20 pages to 30 pages. *Id.*

The protester interprets the combined RFP, PWS, and solicitation Q&A language to mean that offerors were asked to demonstrate their understanding of the PWS's six broad task areas, but were not required to demonstrate a specific approach to the approximately 180 subtask areas included within those six task areas. Protest at 9. The protester maintains that its proposal "clearly . . . demonstrates MSK['s] understanding--honed by its experience as the wholly owned subsidiary of the incumbent--of all six areas," and that the evaluators unreasonably assigned seven deficiencies to MSK's proposal for some of the 180 subtask areas not being "explicitly referenced in the proposal" despite there being no requirement in the solicitation for offerors to address each subtask area. *Id.* Further, the protester contends that the agency's responses to question 77 "implicitly advised that omissions [of "shall statements"] would not *per se* trigger a rejection of an offeror's proposal." *Id.* The protester argues that in light of the agency's responses to question 77 "and the 30-page limit to address both Factors 2 [technical ability] and 3 [program management plan], as well as the 180 subparagraphs included in PWS Section 4, it is unreasonable to interpret the Solicitation as requiring offerors to address each and every subparagraph in their proposals."<sup>3</sup> Rather, the protester asserts, "[a]ll the Solicitation required was that MSK demonstrate its understanding of the six PWS areas, which MSK did," and the agency then unreasonably relied upon the approximately 180 PWS subtask areas as unstated evaluation criteria in assessing seven deficiencies in MSK's proposal. *Id.* at 9-10.

The agency responds that "[n]either the RFP nor the PWS places any special emphasis on any of the numerous paragraphs, subparagraphs, or sub-subparagraphs" in PWS section 4. COS/MOL at 3. Similarly, QED, as the intervenor, notes that "[c]ontrary to MSK's position, the Solicitation's evaluation criteria do not identify any material difference between the list levels"-- *i.e.*, between the main task areas and various subtask areas under each main task area--in the PWS. Intervenor's Comments at 3. In support of this contention, both the agency and QED point to the preamble language of section 4 of the PWS, which references both main task area paragraph levels (*e.g.*, paragraph 4.1) and subtask area paragraph levels (*e.g.*, paragraph 4.6.3) as part of the required services. COS/MOL at 3; Intervenor Comments at 3, *citing* PWS at 23 (stating the successful offeror "shall provide services inclusive of, but not limited to, the specific tasks identified [in] PWS paragraphs 4.1-4.6.3.") (emphasis added).

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<sup>3</sup> The protester maintains that the solicitation's page limit for proposals meant that "[t]here simply was not space" for an offeror to address "in meaningful detail" each of the approximately 180 PWS subtask areas. Protest at 9, *citing* RFP at 8-9. To the extent that MSK believed it was impossible to submit an adequate technical proposal within the number of pages provided for in the solicitation, the firm was required to raise this issue prior to the close of the solicitation. 4 C.F.R. § 21.2(a)(1). Having waited until after award to raise this argument, it is now untimely, and we dismiss it as such. *Id.*; *Main Sail, LLC*, B-412138, B-412138.2, Jan. 29, 2016, 2016 CPD ¶ 26 at 5-6 (allegation that page limit for technical proposals was insufficient to address all of the requirements was untimely when first raised after the solicitation's closing date).

In addition, both the agency and QED contend that MSK's reading of the agency's responses to question 77 is unreasonable. Specifically, QED argues that the agency's responses--contrary to MSK's assertions--"never confirmed that a 'high-level' response to the requirements of the PWS was acceptable," and "[t]o the contrary" the agency "increased the page limit to allow for a full response to the PWS." Intervenor Comments at 4. The agency similarly argues that "[a] reasonable person would recognize that an increase in the page limitation from 20 pages to 30 pages, an increase of 50 percent[,] would only be [to] enable offerors to fully answer the RFP as completely as possible." COS/MOL at 18.

When, as here, parties disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. *Resicum Int'l LLC*, B-421383, Mar. 22, 2023, 2023 CPD ¶ 75 at 4. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Id.*; *Patronus Sys., Inc.*, B-418784, B-418784.2, Sept. 3, 2020, 2020 CPD ¶ 291 at 5.

Here, we find MSK's interpretation of the solicitation unreasonable because it fails to read the RFP, PWS, and solicitation Q&A responses together as a whole. Specifically, the protester's interpretation ignores the PWS's inclusion of both the six main task area paragraph levels and the numerous subtask area paragraph levels in the list of services that "shall" be provided. Further, MSK's interpretation ignores the agency's responses to solicitation questions that specifically declined to identify the number of subtask areas which offerors could leave unaddressed before their proposals would be rejected.

In addition, the protester's interpretation also ignores that instead of providing an explicit number of subtasks that offerors could leave unaddressed or confirming that only a "high level" response for the six main areas was required within the proposal page limit, the agency chose to increase the page limit by 50 percent. Read as a whole, the RFP, PWS and solicitation Q&A responses put offerors on notice that there was no number of required PWS subtasks an offeror safely could leave unaddressed in its proposal without risking receipt of a rating of unacceptable. *See e.g., Octo Metric, LLC*, B-419177, Dec. 17, 2020, 2021 CPD ¶ 42 at 4 (denying argument that the agency applied unstated evaluation criteria in assessing a weakness in protester's proposal for an area of work listed as part of the mandatory requirements of the PWS task being evaluated). Accordingly, we deny MSK's contention that the agency evaluated in a manner inconsistent with the solicitation by applying the subtask areas as unstated evaluation criteria.<sup>4</sup>

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<sup>4</sup> As an alternative to its primary argument that the agency's interpretation of the solicitation is unreasonable, the protester contends that a reading of the solicitation in which the approximately 180 subtasks were reasonably encompassed within the six main task areas, such that they did not constitute unstated evaluation criteria, "at best creates a latent ambiguity" in the solicitation. Protest at 10; *see also* Comments at 5. As explained above, we find the protester's interpretation of the solicitation

(continued...)

Finally, the protester argues that “even if the Solicitation did require proposals to address the substance of all 180 subparagraphs, the deficiencies still would not be warranted” because “MSK included language in its proposal that encompasses the purportedly ignored subparagraph[s].”<sup>5</sup> Protest at 10. In support of this argument, MSK’s protest includes a two-page exhibit in which, next to each of the seven assessed areas of deficiency, the protester quotes various sections of MSK’s proposal. Protest exh. 1 at 2-3. Other than emphasizing certain sections of the quoted proposal text with italics and a different color font, MSK provides absolutely no explanation, in either the exhibit or the protest itself, as to how the quoted passages address the missing subtask areas for which the evaluators assessed the challenged deficiencies.<sup>6</sup> The agency maintains that the assessed deficiencies are reasonable and in accordance with the solicitation. See *generally* COS/MOL at 4-17.

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unreasonable and the agency’s interpretation reasonable. Accordingly, we need not reach the protester’s alternative latent ambiguity argument, as an ambiguity exists only when a solicitation is susceptible to two or more reasonable interpretations. *TCG, Inc.*, B-417610, B-417610.2, Sept. 3, 2019, 2019 CPD ¶ 312 at 6.

<sup>5</sup> We note the protester does not challenge the sixteen weaknesses and five significant weaknesses the evaluators assessed in MSK’s proposal. See Protest at 3-10; Protest exh. 1 at 2-3.

<sup>6</sup> In its comments on the agency report, MSK attempts to provide, for the first time, some explanation of how the quoted proposal passages address the missing subtask areas for which the evaluators assessed deficiencies in MSK’s proposal. See *generally* Comments at 6-9. Our Bid Protest Regulations contain strict rules for the timely submission of protests, and our decisions explain that the piecemeal presentation of evidence, information, or analysis supporting allegations previously made is prohibited. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4. Our Office will dismiss a protester’s piecemeal presentation of arguments that could have been raised earlier in the protest process. 4 C.F.R. § 21.2(a)(2); see e.g., *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CDP ¶ 369 at 9 (declining to consider additional factual support for challenge to an assessed weakness that protester was aware of at the time of its initial protest but did not raise until submitting its comments on the agency report).

Here, prior to filing its initial protest, the agency provided MSK with a debriefing identifying the deficiencies assessed in MSK’s proposal. Despite having this knowledge, MSK’s initial protest did nothing more than quote sections of the firm’s proposal without providing an explanation as to why the quoted sections supposedly render the assessed deficiencies unreasonable. See Protest at 10; Protest exh. 1 at 2-3. Rather, MSK waited until submitting its comments on the agency report to provide any elucidation of the purported nexus between the quoted proposal sections and assessed deficiencies. Accordingly, we will not consider this untimely piecemeal presentation of MSK’s challenge to its evaluation. *Battelle Memorial Inst.*, *supra* at 9.

While MSK expresses its belief that its proposal adequately responded to the PWS, the evaluators found otherwise. Based on our review of the record, we find no basis to conclude that the evaluators' findings were unreasonable. Nor are we able to discern from MSK's protest how the quoted passages from its proposal indicate that the evaluators ignored information in the proposal or otherwise unreasonably assessed the challenged deficiencies.<sup>7</sup> In this regard, MSK's protest argument amounts to nothing more than the protester's disagreement with the agency's evaluation, which without more, is insufficient to establish that the agency evaluated in an unreasonable manner. See e.g., *MP Solutions, LLC*, B-420953, B-420953.2, Nov. 21, 2022, 2022 CPD ¶ 289 at 12-13 (denying protest challenge assessment of a deficiency where the protester "quotes large sections of text from its proposal" but provided "little explanation of how the quoted passages address the missing items noted by the evaluators" leading our Office to find that the protester's argument "amount[ed] to nothing more than disagreement with the agency's evaluation"); *BNP Education Partners LLC d/b/a/ Marzano Research.*, B-420247, Jan. 12, 2022, 2022 CPD ¶ 32 at 9 (finding that protester's "belief that its proposal sufficiently conveyed" certain information provided no basis to question the evaluators' conclusion that it did not). Accordingly, we deny MSK's challenge to the assessment of seven deficiencies in its proposal.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>7</sup> For example, the evaluators assessed a deficiency under the engineering support main task area for MSK's failure "to address providing technical support in overseeing the development of all documentation and coordination for the establishment of an ATO [Authority to Operate] for PM FPS systems." AR, Tab 22, MSK Evaluation at 9, 13, *citing* PWS at 26. In challenging this deficiency, MSK, without further explanation, cites to the following two excerpts from its proposal: (1) "[DELETED]"; and (2) "[DELETED]." Protest exh. 1 at 2, *citing* AR, Tab 18, MSK Technical Proposal at 33-34.

The agency explains that the first excerpt cited by MSK, which includes the term "ATO" was in the section of MSK's proposal addressing the logistics management support, rather than the engineering support, main task area. COS/MOL at 5-6. Additionally, the agency notes that while it mentions "ATO," MSK's proposal "provided no details on the support necessary for establishment of an ATO." *Id.* at 6. Based on the record before us, we have no basis to question the evaluators' judgment that the passing reference to an ATO package in the logistics management support section of MSK's proposal was insufficient to address the ATO requirement under the PWS's engineering support task area.