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# Decision

**Matter of:** Professional Analysis, Inc.

**File:** B-422226.4; B-422226.5

**Date:** November 4, 2024

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

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## DIGEST

1. Protest allegations are dismissed where the protester withdrew and abandoned its initial arguments and instead raised new untimely arguments.
  2. Protest that the awardee's proposal improperly took exception to the solicitation requirements is denied where the agency reasonably determined that the awardee's assumptions were not exceptions, and where proposal language in question reflects the reservation of a right to request, rather than receive, a price adjustment.
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## DECISION

Professional Analysis, Inc. (PAI), a small business of Alexandria, Virginia, protests the award of a contract to CACI, Inc.-Federal, of Chantilly, Virginia, under request for proposals (RFP) No. N3220523R4140, issued by the Department of the Navy, Military Sealift Command (MSC), for worldwide logistics services. The protester contends that the agency should have found the awardee's proposal to be technically unacceptable because it failed to revise its technical proposal although it drastically reduced its price in its final proposal revision, that the agency failed to perform a price realism evaluation, and that the awardee failed to certify that its "price was without reservation, assumption, or qualification" as required by the solicitation.

We dismiss in part and deny in part the protest.

## BACKGROUND

The agency issued the RFP on May 26, 2023, using the combined procedures of Federal Acquisition Regulation (FAR) parts 12 and 15. Agency Report (AR), Tab 73, RFP at 01919, 01921.<sup>1</sup> The RFP contemplated the award of a fixed-price contract with a period of performance consisting of a 2-month phase-in period, a 10-month base period, and four 12-month option periods. *Id.* at 01943, 01945. The RFP requires that the contractor provide qualified personnel, training, equipment, supplies, facilities, transportation, tools, materials, and other items as necessary to provide the worldwide logistics services as defined in the performance work statement (PWS). *Id.* at 01940.

The RFP stated that proposals would be evaluated under the following four factors: technical approach; past performance; price; and small business participation commitment document. *Id.* at 02016. The technical approach factor included the following three subfactors: organizational experience; understanding to sample problems 1, 2, 3, and 5; and management approach and personnel experience. *Id.* The RFP further stated that all factors and subfactors would be evaluated on an acceptable or unacceptable basis, and award would be made using a lowest-price technically acceptable source selection methodology. Specifically, the RFP stated: “Best value will result from the selection of the technically acceptable proposal with acceptable past performance and an acceptable small business participation commitment document and the lowest evaluated price.” *Id.* at 02015.

The agency received timely proposals from two offerors, CACI and PAI. COS/MOL at 1. On November 3, the agency awarded the contract to PAI. *Id.* at 2. CACI filed a protest with our Office challenging the agency’s evaluation and selection decision; our Office dismissed the protest as academic after the agency advised that it would take corrective action. *CACI, Inc.-Federal*, B-422226, B-422226.2, Jan. 19, 2024 (unpublished decision).

During corrective action, the agency engaged in discussions with CACI and PAI, revised the solicitation, and solicited revised proposals. COS/MOL at 2. In the final evaluation of proposals, the evaluators found both CACI and PAI acceptable for all the non-price factors and subfactors; CACI’s proposed price was \$69,209,548, and PAI’s proposed price was \$72,892,334. *Id.* at 6-7; AR, Tab 120, Source Selection Decision Document at 02773. On July 8, 2024, the agency awarded a contract to CACI as the lowest-priced, technically acceptable offeror. COS/MOL at 7. PAI received a debriefing, and this protest followed.

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<sup>1</sup> The RFP was amended six times. Citations to the RFP in this decision are to amendment 0006, provided at tab 73, which the agency states is a rewritten and conformed solicitation. See Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2 n.3. In addition, all page citations to record documents are to the Bates page numbers.

## DISCUSSION

In its initial protest, PAI raised multiple challenges to the agency's evaluation of CACI's proposal. Specifically, the protester argued that: (1) CACI's small business participation will fall short of the required commitment and is not realistic; (2) CACI's revised price was not reasonably assessed alongside its unrevised technical approach; (3) CACI lacks the organizational experience necessary to have been found technically acceptable; (4) CACI has an organizational conflict of interest (OCI) that cannot be mitigated; (5) CACI failed to submit a revised technical proposal during corrective action; and (6) CACI cannot satisfy the RFP's personnel requirements at its reduced price. Protest at 8-22.

The agency report substantively responded to each of the protest grounds.<sup>2</sup> COS/MOL at 8-17. In its report, the agency requested that we dismiss or deny the protest, and specifically rebutted the protester's contention that CACI did not submit a revised technical proposal. COS/MOL at 8-9; see AR, Tab 107, CACI Final Revised Proposal. The agency argued that it reasonably evaluated CACI's final revised proposal in accordance with the terms of the solicitation and concluded it was acceptable under all factors and subfactors. *Id.* at 9. The agency further argued that while the RFP stated that the agency would assess the realism of offerors' proposed small business

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<sup>2</sup> Prior to submission of the agency report, we dismissed the protester's allegation that CACI possessed an OCI that could not be mitigated. In this regard, the protester argued that an OCI existed because CACI held a task order to provide integrated business systems support for MSC under which it could access PAI's invoices. Protest at 18-20. The agency requested that we dismiss this allegation because the protester did not demonstrate that CACI, Inc.-Federal, the awardee and a different entity than the entity performing the integrated business systems support task order--CACI Enterprise Solutions--had access to PAI's invoices. Req. for Dismissal at 9. Aside from incorrectly identifying CACI, Inc.-Federal as the entity performing the integrated business systems support task order, PAI provided no other facts to support its contention that an OCI was created by award of the contract to CACI, Inc.-Federal.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f); see also *Abacus Tech. Corp.*, B-417749.2, B-417749.3, Mar. 9, 2020, 2020 CPD ¶ 125 at 6. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Kodiak Base Operations Servs., LLC*, B-414966 *et al.*, Oct. 20, 2017, 2017 CPD ¶ 323 at 3. PAI failed to identify facts sufficient to demonstrate that an actual or potential conflict existed, and its allegation simply did not establish the likelihood that the agency in this case violated any applicable procurement laws or regulations, therefore we dismissed it. Electronic Protest Docketing System Nos. 18-19; 4 C.F.R. § 21.5(f). Accordingly, the agency report addressed only the remaining allegations.

participation commitment, the RFP did not require that it perform a price realism analysis, only a price reasonableness analysis. The agency argues its evaluation of the realism of CACI's proposed small business participation commitment and the reasonableness of CACI's revised price were each reasonable and consistent with the evaluation stated in the RFP. *Id.* at 11-13.

Following its review of the agency report, PAI withdrew its allegations regarding CACI's unrealistic small business participation commitment, lack of organizational experience, and failure to submit a revised technical proposal during corrective action. Comments & Supp. Protest at 2. Thus, PAI's only remaining arguments were that CACI's revised price was not reasonably assessed alongside its unrevised technical approach, and that CACI could not satisfy the RFP's personnel requirements at its reduced price. However, the protester did not meaningfully address the agency's substantive response to its evaluation of CACI's proposal and we therefore consider these arguments abandoned. 4 C.F.R. § 21.3(i)(3) (GAO will dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response); see e.g., *Phoenix Data Sec., Inc., et al.*, B-419956.200 *et al.*, July 10, 2023, 2023 CPD ¶ 172 at 16-17 (protest dismissed where the protester abandoned its initial arguments and raised new untimely arguments).

Instead, the protester argued for the first time in its comments on the agency report that "MSC admittedly failed to properly evaluate the price realism aspect of the proposals submitted by the offerors leading to an abbreviated and flawed source selection decision." Comments & Supp. Protest at 2. PAI now argues that the RFP required, and the agency should have performed, a price realism analysis, and had it done so it would have found CACI's proposal to be technically unacceptable. *Id.* at 3-8; see Supp. Comments at 2-7.

PAI's argument is based on its interpretation of solicitation language describing the evaluation of the small business participation commitment document factor. As relevant, the solicitation stated that this factor would be evaluated for "the extent to which small businesses are specifically identified in the proposal; the extent of the commitment to use such firms (e.g. binding commitments will become enforceable/contractual requirements); the complexity and variety of the work small firms are to perform; and the extent of participation of small businesses in terms of the value of the total acquisition, and *the realism of the proposal.*" RFP at 02018 (emphasis added). PAI asserts that because the solicitation referred to evaluation of the realism of the "proposal," and not just the subcontracting plan, that the RFP required a price realism evaluation of the entire proposal, which necessarily included price. Comments & Supp. Protest at 3-4. The protester maintains that "if the [a]gency had evaluated CACI's price for realism as required by the RFP, the current awardee's proposal would have been found unacceptable." *Id.* at 4.

On this record, we conclude that the protester's argument that the RFP required a price realism analysis that the agency failed to perform is untimely or an improper piecemeal presentation of an argument because it was not raised within 10 days of when the

protester knew or should have known of its basis. See 4 C.F.R. § 21.2(a)(2). Because this argument is based entirely on the solicitation's requirements, the protester could have raised this argument in its initial protest but failed to do so. Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CORMAC Corp.*, B-421532, B-421532.2, June 14, 2023, 2023 CPD ¶ 142 at 4-5 n.8. We will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. *Id.*

Here, based on the RFP language that the agency would evaluate the realism of the proposal under the small business participation commitment document factor, PAI initially argued that the awardee's small business participation commitment was unattainable and therefore unrealistic. Protest at 8-11. To the extent PAI believed that this same solicitation language required a price realism evaluation separate from the evaluation under the small business participation commitment document factor, it could have raised this argument in its initial protest. In this regard, the protester knew its own price and it knew the awardee's price when it received the agency's July 9, 2024, notice of the award decision. Protest, exh. A, Notice to Unsuccessful Offeror. These facts were sufficient to allow the protester to determine whether it thought the awardee's price was too low. It did not need to wait until the agency stated in its agency report that it did not conduct a price realism analysis to raise this argument.

At any rate, we conclude that the solicitation did not require a price realism evaluation. Regarding the evaluation of price, the RFP stated: "The offeror's proposed price will be evaluated on the basis of price fair and reasonableness using price analysis techniques in accordance with FAR 15.404-1(b)." RFP at 02013; see also *id.* at 02018 ("The Total Evaluated Price will be evaluated utilizing price analysis in accordance with FAR 15.404-1(b)."). The RFP further stated:

The Government will evaluate each and every price, however, the Government may only determine that the lowest error-free price submitted is fair and reasonable. In the event that the Government determines it necessary to request other than certified cost or pricing data, it is the Government's right to do so. The Government will also evaluate any separately priced line items for significantly unbalanced prices pursuant to FAR 15.404-1(g).

*Id.* at 02018. The RFP did not state that the agency would perform a price realism analysis.<sup>3</sup> The word "realism" does not appear under the price factor or anywhere else

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<sup>3</sup> We also note that when our Office resolved a request for reimbursement of costs filed by CACI following its protest of the initial award to PAI, we stated that the RFP here did not require that the agency perform a price realism analysis. *CACI, Inc.-Federal*, B-422226.3, May 24, 2024, 2024 CPD ¶ 133 at 7 n.4 ("To the extent CACI was arguing (continued...)

in the RFP, and the RFP does not state that a proposal will be rejected if the agency concludes that an offeror's price is too low. See *URS Fed. Servs., Inc.*, B-412580, B-412580.2, Mar. 31, 2016, 2016 CPD ¶ 116 at 7 (stating that for an agency to perform a price realism analysis, a solicitation must contain either an express price realism provision or a statement warning offerors that a business decision to submit low pricing may form the basis for rejecting the low-priced offeror's proposal). Rather, the RFP stated that in its evaluation of proposals the agency would assess the realism of an offeror's small business participation commitment document only under that factor. Accordingly, we find that the RFP did not require a price realism analysis as the protester contends.

PAI also argues that the RFP required that offerors certify that their proposed "price was without reservation, assumption, or qualification" and includes all PWS requirements, and it provided the required certification while CACI did not. Comments & Supp. Protest at 8-14. The protester further contends that CACI's proposal took exception to the solicitation that should have rendered its proposal unacceptable by including 37 assumptions, to which the agency unreasonably and mechanically conceded. *Id.* at 9-11. According to PAI, the record shows the agency performed a disparate evaluation where the agency relaxed evaluation criteria for CACI but not PAI. *Id.* at 12-14; see also Supp. Comments at 7-10.

The agency argues that the solicitation permissively requested that offerors provide a certification, but the terms of the solicitation did not otherwise mandate that a proposal would be deemed unacceptable if one was not provided. Supp. MOL at 8-9. The agency further argues that none of CACI's assumptions take exception to a material term of the solicitation and simply reserve the right to request an equitable adjustment, and that the agency properly considered and documented its conclusion that CACI's assumptions were reasonable. *Id.* at 9-11. The agency also argues that the evaluation was not disparate because neither CACI nor PAI took exception to the terms of the solicitation, thus neither offeror was found unacceptable on that basis. *Id.* at 11-16.

A proposal that takes exception to a solicitation's material terms and conditions must be considered unacceptable for award. *BillSmart Sols., LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 13. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services being provided. *Id.* at 13-14; *Kratos Defense & Rocket Support Servs., Inc.*, B-413143.2, Aug. 23, 2016, 2016 CPD ¶ 227 at 5. Where a solicitation requests offers on a fixed-price basis, an offer that is conditional and not firm cannot be considered for award. *Dev Tech. Grp.*, B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 5; see *Advanced Techs. & Labs. Int'l, Inc.*, B-411658 *et al.*, Sept. 21, 2015, 2015 CPD ¶ 301 at 10. Nonetheless, this Office will not sustain a protest where the record reflects a procuring agency's

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that the agency had to evaluate whether PAI's price was so low it indicated a lack of understanding of the requirements or introduced risk of poor performance, this is an argument that the agency failed to conduct a price realism analysis, which the RFP did not require.").

reasonable determination that the awardee's proposal did not take exception to the solicitation's requirements. See *SRA Int'l, Inc.; NTT DATA Servs. Fed. Govt., Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 20-21.

Here, the RFP's instructions under the price factor required offerors to "complete Section B of [standard form] 1449 to include [contract line item number (CLIN)] pricing for each CLIN, a total price for all CLINs, and submit that document," and stated that the "total price for all CLINs will be the Total Evaluated Price." RFP at 02013. The RFP also required that offerors submit a pricing spreadsheet provided as exhibit A to the RFP, and stated as follows:

The Offeror shall be held to the unit prices submitted in the Pricing Spreadsheet, Exhibit A. In the event that a CLIN total price or an overall total price conflict exist between the Section B of the 1449 and the Pricing Spreadsheet, then the value in Section B of the 1449 shall govern.

Please provide certification that price was without reservation, assumption, or qualification and that the Total Evaluated Price contains pricing for all the work in the PWS.

*Id.*

In its price proposal, CACI stated that it "takes no exception to any terms, conditions, or provisions included in the solicitation and agrees to furnish any or all services upon which prices are offered." AR, Tab 109, CACI Final Revised Price Proposal at 02415. CACI also included assumptions and clarifications, including pricing and deliverable assumptions, and stated that if any of its assumptions or clarifications were not met, CACI "reserves the right to request an equitable adjustment to delivery schedule, contract price or both." *Id.* at 02417-02419. The record shows that the agency considered all the assumptions and clarifications but did not find that any took exception to the RFP. AR, Tab 117, CACI Proposal Assumptions and Clarifications Analysis at 02754-02759.

Although we do not address all the protester's specific challenges to CACI's assumptions, we have considered them all and find that none provide a basis to conclude that CACI took exception to a material solicitation requirement. For example, the protester argues that CACI's proposal took exception to the solicitation by including an assumption that changes to government references cited within the solicitation during the life of the contract may require an equitable adjustment. Comments & Supp. Protest at 10; see AR, Tab 109, CACI Final Revised Proposal at 02417 ("[DELETED]"). The record shows that the contracting officer did not consider this assumption to take exception to the requirements of the RFP, and concluded as follows:

Contracting Officer acknowledges this statement and that this assumption does not qualify as an exception as CACI's proposal states

on page III-3 that CACI takes no exception to any terms, conditions, or provisions included in the solicitation and agrees to furnish any or all services upon which prices are offered. Any changes to the contract will be done by contract modification.

AR, Tab 117, CACI Proposal Assumptions and Clarifications Analysis at 02755. The agency argues that “it is entirely reasonable that Awardee reserves the right to request an equitable adjustment if these references change,” and that this assumption does not take exception to the RFP requirements. Supp. MOL at 12. We agree with the agency that the contracting officer’s conclusion was reasonable, and that the right to request equitable adjustment did not indicate that CACI’s proposed price was not firm. We have previously recognized that the mere reservation of the right to request a price adjustment--a request that the agency could decline--is not equivalent to the right to receive an adjustment. See *Dev Tech. Grp.*, *supra* at 6 (reservation of a right to request, rather than receive, a price adjustment was not an exception to solicitation’s fixed-price requirements); *Language Servs. Assocs., Inc.*, B-297392, Jan. 17, 2006, 2006 CPD ¶ 20 at 10 n.10 (statement reserving right to negotiate equitable adjustment was not exception to solicitation’s fixed-price term); *Jantec, Inc.*, B-292668, B-292668.2, Nov. 6, 2003, 2003 CPD ¶ 222 at 9-10 (statement that “we would ask the Government to consider this extra cost” was not exception to solicitation’s fixed-price term).

The protester also argues that “CACI reserved the right to raise their price if, there is a ‘delay in award’.” Comments & Supp. Protest at 9. In this regard, the CACI proposal states: “Any delay in award or subsequent optional periods may cause a work stoppage for the following reasons: [] Our assumption is the contract phase-in starts 18 October 2024 with a contract execution start of 18 December 2024.” AR, Tab 109, CACI Final Revised Proposal at 02417. CACI further explained that personnel have common access cards, and access to systems and databases, that will expire in December 2024 if performance is delayed. *Id.*

The record shows that the contracting officer acknowledged this assumption, noting that “MSC intends to award the contract before the phase in start date of 18 [October] 2024 which will allow for timely processing of [common access cards].” AR, Tab 117, CACI Proposal Assumptions and Clarifications Analysis at 02754. The agency argues that the contracting officer’s conclusion in this regard was reasonable because “access to Government facilities and Government information technology systems both involve Government-controlled processes, each of which can proceed slowly,” and the assumption presented “a hypothetical--but not impossible--Government-caused delay (issuing [common access cards] or granting systems access).” Supp. MOL at 12. The agency argues that CACI’s reservation of a right to request equitable adjustment is not the same as reserving a right to increase its price. *Id.* Again, we agree with the agency that the contracting officer reasonably concluded that CACI did not take exception to the terms of the solicitation. As noted, CACI’s proposal stated that it took no exception to the solicitation and would provide the services at the offered price; CACI’s reservation of a right to request equitable adjustment did not create a right to receive one.



In sum, we conclude that CACI's proposal did not take exception to material terms of the solicitation, nor did the agency improperly relax material solicitation requirements and treat the offerors disparately. To the contrary, the record shows that CACI expressly stated that it took "no exception to any terms, conditions, or provisions included in the solicitation and [agreed] to furnish any or all services upon which prices are offered." AR, Tab 109, CACI Final Revised Proposal at 02415. Thus, we find the agency's evaluation and the contracting officer's conclusion that the assumptions included in CACI's proposal did not take exception to material requirements in the RFP to be reasonable. Accordingly, we deny this allegation.

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez  
General Counsel