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Decision

Matter of: The Mission Essential Group, LLC

File: B-422698.2

Date: January 8, 2025

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DIGEST

Protest that a solicitation improperly provides for award on a lowest-price, technically acceptable (LPTA) basis is sustained where the agency unreasonably determined that the statutory and regulatory requirements for use of LPTA award criteria were satisfied.

DECISION

The Mission Essential Group, LLC (Mission Essential), of New Albany, Ohio, protests the terms of fair opportunity proposal request (FOPR) No. FA564124R0004, issued by the Department of the Air Force for pilot augmentation support services in Europe and Africa. The protester contends that the solicitation improperly provides for award of a task order on a lowest-price, technically acceptable (LPTA) basis. The protester also contends that numerous solicitation terms are improper and unduly restrictive of competition.

We sustain the protest.

BACKGROUND

On June 6, 2024, the agency issued the FOPR to holders of the Air Force's Advisory and Assistance Services (A&AS V) contract, a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract.¹ Agency Report (AR), Tab 28, FOPR at 2. The solicitation, which was issued pursuant to Federal Acquisition Regulation (FAR)

¹ Citations in the decision use the Adobe PDF pagination.

subpart 16.5, is a “follow-on” task order issued under the A&AS IV IDIQ contract. The FOPR seeks a contractor to provide “in-garrison functional support services to the programs, projects, and processes employed by [U.S. Air Forces in Europe and Air Forces Africa (USAFE-AFAFRICA)] to meet existing and future contingency requirements,” including support for USAFE-AFAFRICA headquarters and subordinate units’ flying squadrons, and support for non-flying duties in combat and rescue squadrons, which have customarily used pilots and weapons officers to perform non-flying duties. *Id.* at 7. The FOPR contemplates the issuance of a task order of primarily fixed-price contract line item numbers (CLINs) for a 1-year base period and four 1-year option periods.² *Id.* at 2.

Award is to be made on an LPTA basis with the technical factor consisting of two subfactors: (1) past technical experience and (2) a staffing plan.³ *Id.* at 3, 87-89. To receive a rating of acceptable for the past technical experience subfactor, an offeror must submit no more than two work samples with supporting documentation that “clearly demonstrate” the offeror has past technical experience “performing work similar to that listed within paragraphs 3.1 and 3.4 of the [performance work statement (PWS)], within the past five (5) years from the issuance date of the FOPR for a minimum of one (1) continuous year” for each work sample. *Id.* at 89. Paragraphs 3.1 and 3.4 of the PWS detail 46 pages of performance requirements for management, operational, and professional support services (paragraph 3.1) and administrative services (paragraph 3.4). *Id.* at 18-64.

For the staffing subfactor, the FOPR instructs offerors to “describe their proposed approach for accomplishing the tasks within paragraphs 3.1 and 3.4 of the PWS to a level that shows a clear understanding of the requirements” and not to restate the PWS. *Id.* at 86. The solicitation provides that offerors “shall describe their unique plan for accomplishing the tasks.” *Id.* The Air Force will determine a proposal to be technically acceptable when the proposed staffing plan outlines the offeror’s “unique planned approach” for performing the tasks within PWS paragraphs 3.1 and 3.4 that shows “a clear understanding of the requirements, identifies the roles and responsibilities for each proposed team member, and provides rationale for any deviations taken to the Government provided estimated staffing, if required.” *Id.* at 89.

The Air Force issued amendment 1 to the solicitation on June 18 answering questions about the FOPR that included additional information about proposal evaluations. AR, Tab 33, FOPR amend. 1 at 76. As relevant to this protest, the agency explained that past technical experience “similar to” the PWS is “performance within flying operational units.” *Id.* (government’s answer to question No. 1). The agency also advised that it would evaluate the overall work samples and that it would not separately evaluate the subtasks of paragraphs 3.1 and 3.4. *Id.* (government’s answers to question Nos. 2

² The FOPR also includes cost-reimbursement CLINS for travel, other direct costs, surge support, and Department of Defense Contract Personnel Office Differential (DOCPER). FOPR at 2.

³ The details of the price factor are not relevant to this protest.

and 7). The agency further explained that it “will not set a stipulation that any specific number of subtasks be met.” *Id.* (government’s answers to question No. 6).

On June 26, prior to the deadline for receipt of proposals, Mission Essential filed a protest with our Office challenging the FOPR’s LPTA award methodology, other evaluation criteria, and the length of the transition period as unduly restrictive of competition. *See generally* AR, Tab 36, Protest (B-422698). Prior to filing an agency report, the Air Force advised our Office that it would take corrective action in response to the protest. *The Mission Essential Group LLC, B-422698, July 31, 2024 at 1* (unpublished decision). The agency stated that it would “conduct and document new market research appropriate to the requirement and adjust the transition period” and “either amend the FOPR and permit revised proposals, or cancel the solicitation and issue a new FOPR with clearly defined requirements and a longer transition period.” *Id.* We concluded that the proposed corrective action rendered the protest academic and dismissed the protest. *Id.* at 2.

On September 18, the Air Force issued amendment 2, which revised the transition period but did not otherwise make substantive changes to the FOPR. AR, Tab 42, FOPR amend. 2 at 1, 3. In response to additional questions from offerors, the agency provided answers about the evaluation criteria. *Id.* at 2. As relevant here, the Air Force advised that it is not requesting offerors to “demonstrate similar experience with **ALL** PWS subtasks,” but that it “has consistently requested work samples that demonstrate Past Technical Experience performing work ‘similar to’ that listed within paragraphs 3.1 and 3.4 of the PWS.” AR, Tab 44, FOPR amend. 2, Question and Answer (Q&A) Responses at 3 (government response to question Nos. 5 and 8). The Air Force further clarified that “similarity” was not limited to this specific pilot augmentation mission; rather, similarity may be demonstrated through work “performed on behalf of partner nations, commercially, for any other branch of service/federal agency, etc.” *Id.* (government response to question No. 6).

Also on September 18, the contracting officer completed a market research report and a determination and findings (D&F) memorandum to use LPTA evaluation criteria for this procurement in conjunction with the agency’s corrective action. AR, Tab 41, Market Research Rept.; AR, Tab 40, LPTA D&F Memorandum. The two-page memorandum contained the agency’s justification for using LPTA evaluation procedures. AR, Tab 40, LPTA D&F Memorandum.

Proposals were due no later than October 2 and Mission Essential filed this protest on September 30.⁴

⁴ The awarded value of the task order at issue exceeds \$25 million. Accordingly, at the time this protest was filed on September 30, 2024, this procurement was within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of title 10 of the United States Code, 10 U.S.C. § 3406(f)(1)(B); see National Defense Authorization Act for Fiscal Year 2025, (continued...)

DISCUSSION

Mission Essential raises six primary challenges to the solicitation evaluation criteria: (1) the past technical experience requirements are unduly restrictive of competition; (2) the solicitation constitutes an improper *de facto* sole-source award to the incumbent contractor; (3) the past technical experience requirements exceed the scope of the underlying A&AS V IDIQ contract; (4) the past technical experience requirements constitute an improper prequalification requirement under 10 U.S.C. § 3243; (5) the FOPR arbitrarily limits past technical experience to that of the prime contractor; and (6) the use of LPTA source selection procedures for this acquisition is improper and violates Defense Federal Acquisition Regulation Supplement (DFARS) section 215.101-2-70. For the reasons discussed below, we conclude that this solicitation does not meet the requirements under the DFARS and that the use of LPTA award criteria is improper for this solicitation. We sustain the protest on this basis.⁵

Section 813 of the National Defense Authorization Act for fiscal year 2017 provides that “[i]t shall be the policy of the Department of Defense to avoid using lowest price technically acceptable source selection criteria in circumstances that would deny the Department the benefits of cost and technical tradeoffs in the source selection process.” Pub. L. No. 114-328, 130 Stat. 2270 (2016). Section 215.101-2-70 of the DFARS implementing this statutory requirement contains eight criteria, all of which must be satisfied by a solicitation that uses an LPTA source selection methodology:

- (i) Minimum requirements can be described clearly and comprehensively and expressed in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers;
- (ii) No, or minimal, value will be realized from a proposal that exceeds the minimum technical or performance requirements;
- (iii) The proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror’s proposal versus a competing proposal;
- (iv) The source selection authority has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit;

Pub. L. No. 118-159, 138 Stat. ____ § 885 (amending jurisdictional threshold to \$35 million for protests of orders placed under IDIQ contracts awarded under authority of title 10, effective December 23, 2024); *Technatomy Corp.*, B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5-6 (changes to jurisdiction will not be given retroactive effect, absent specific statutory direction).

⁵ Although our decision does not address every argument raised, we have reviewed them all and, except as discussed here, find no basis to sustain the protest.

(v) No, or minimal, additional innovation or future technological advantage will be realized by using a different source selection process;

(vi) Goods to be procured are predominantly expendable in nature, are nontechnical, or have a short life expectancy or short shelf life . . . ;

(vii) The contract file contains a determination that the lowest price reflects full life-cycle costs [. . .] of the product(s) or service(s) being acquired (see [Procedures, Guidance, and Information (PGI)] 215.101-2-70(a)(1)(vii) for information on obtaining this determination);⁶ and

(viii) The contracting officer documents the contract file describing the circumstances justifying the use of the lowest price technically acceptable source selection process.

DFARS 215.101-2-70(a)(1) (providing that LPTA “source selection process shall only be used when--” and listing all eight elements above); *see also Verizon Bus. Net. Servs., Inc.*, B-418331.3 *et al.*, July 10, 2020, 2020 CPD ¶ 235 at 4 (“DFARS section 215.101-2-70(a)(1) contains eight criteria, all of which must be satisfied by a solicitation that employs an LPTA evaluation method.”).⁷ Additionally, this DFARS subsection requires that contracting officers “avoid, to the maximum extent practicable,” using LPTA procedures for procurements that are “predominantly for the acquisition” of certain items or services including, as relevant here, “knowledge-based professional services.” *Id.* at (a)(2)-(a)(2)(i).

The determination of the government’s needs and the best method of accommodating them is primarily the responsibility of the procuring agency, since its contracting officials are most familiar with the conditions under which supplies, equipment, and services have been employed in the past and will be utilized in the future. *Pitney Bowes, Inc.*, B-413876.2, Feb. 13, 2017, 2017 CPD ¶ 56 at 3. Although it is within a contracting agency’s discretion to determine its needs and the best method to accommodate them, an agency’s determination of its needs must still be reasonable. *See Curtin Maritime Corp.*, B-417175.2, Mar. 29, 2019, 2019 CPD ¶ 117 at 11. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, that is, whether it can withstand logical scrutiny. *Id.* Our

⁶ PGI is a resource companion to the DFARS. PGI 215.101-2-70(a)(1)(vii) states that “the contracting officer shall document the contract file with a determination from the requiring activity that the lowest priced offer reflects full life-cycle costs for the supply or service.” Defense Federal Acquisition Regulation Supplement PGI, https://www.acquisition.gov/dfarspgi/pgi-part-215-contracting-negotiation#DFARS_PGI_215.101-2-70 (last visited Dec. 30, 2024).

⁷ Section 216.505(b)(1)(A) of the DFARS provides that the limitations and restrictions on the lowest-price technically acceptable source selection process enumerated in DFARS section 215.101-2-70 are applicable to orders placed against multiple award indefinite-delivery contracts.

Office has applied these standards in reviewing agency decisions to adopt LPTA procedures. *See, e.g., Verizon Bus. Net. Servs., Inc., supra* (finding the agency's use of LPTA award criteria for a task order was unobjectionable under DFARS section 215.101-2-70).

Challenges to the Enumerated Factors

Mission Essential contends that the solicitation does not satisfy the regulatory criteria for use of LPTA source selection procedures. Protest at 36-38; Comments at 42-55.

Specifically, Mission Essential asserts that an agency may only use LPTA methodology if all eight criteria under DFARS section 215.101-2-70(a)(1) are met. Mission Essential asserts that the FOPR here fails to meet at least the following three criteria:

(i) Minimum requirements can be described clearly and comprehensively and expressed in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers;

(ii) No, or minimal, value will be realized from a proposal that exceeds the minimum technical or performance requirements; and

(vii) The contract file contains a determination that the lowest price reflects full life-cycle costs [. . .] of the product(s) or service(s) being acquired.

Protest at 37-38; Comments at 46-53.⁸ Mission Essential also argues that the Air Force has not avoided using LPTA procedures to the maximum extent practicable and complains that the contracting officer's D&F memorandum is missing any rationale as to why it would be impracticable for the Air Force to use other source selection procedures for this procurement. Comments at 54-55.

⁸ In its protest, Mission Essential argues more broadly that the FOPR failed to satisfy several of the eight requirements of DFARS section 215.101-2-70. *See generally* Protest at 36-38. After receiving the agency report, the protester's comments focus on three criteria the protester alleges the FOPR fails to satisfy. Comments at 46-53; *see also* DFARS 215.101-2-70(a)(1)(i), (ii) & (vii). As Mission Essential's comments do not address the other DFARS evaluation criteria, we consider them abandoned and do not address them further. *Teksynap Corp.*, B-419464.3, B-419464.4, Jan. 5, 2023, 2023 CPD ¶ 40 at 4 n.4.

Description of Minimum Requirements

The protester contends that the FOPR's minimum requirements cannot "be described clearly and comprehensively and expressed in terms of performance objectives, measures, and standards" to determine the acceptability of offers. Protest at 37; Comments at 46-49; DFARS 215.101-2-70(a)(1)(i). The protester asserts that this acquisition does not involve the kind of services that can be distilled into performance objectives appropriate for the type of pass/fail analysis that is, in the protester's view, envisioned by DFARS subsection 215.101-2-70(a)(1). Protest at 37; Comments at 46. The protester also contends that the criteria are not met because the FOPR does not express the requirements with a measurable minimum or threshold requirement, nor does it include any objective performance metrics. Comments at 46-47. Rather, the FOPR provides for evaluating past technical experience, which must demonstrate "similarity to" PWS paragraphs 3.1 and 3.4 covering 46 pages of performance requirements. *Id.* at 47. Mission Essential further argues that nothing in the record explains how the FOPR establishes the Air Force's minimum requirements or how the PWS requirements relate to measurable performance objectives that the Air Force will use to determine acceptability. *Id.* at 48-49.

The agency responds that it properly justified the use of LPTA award criteria in the D&F memorandum. Contracting Officer's Statement (COS) at 50, 52; Memorandum of Law (MOL) at 35. The agency argues that the pilot augmentation services requirement is "clearly and comprehensively defined in the Technical subfactors, specifically referencing the subtasks referenced in the PWS," and maintains "there is no room for ambiguity in the subject PWS subtasks." MOL at 36. We disagree with the agency.

The FOPR states that the past technical experience subfactor will be

technically acceptable when the submitted Work Sample(s) and required supporting documentation clearly demonstrate that the Offeror has [past technical experience] . . . performing work similar to that listed within paragraphs 3.1 and 3.4 of the PWS, within the past five (5) years from the issuance date of the FOPR for a minimum of one (1) continuous year.

FOPR amend. 2 at 87. In response to offerors' questions, the Air Force explained that "similar to" meant past technical experience with flying operational units. FOPR amend. 1 at 76; AR, Tab 44, FOPR amend. 2, Q&A Responses at 3. The Air Force further provided that the PWS subtasks would not be separately evaluated and that offerors need not demonstrate similar experience with all PWS subtasks. FOPR amend. 1 at 76; AR, Tab 44, FOPR amend. 2, Q&A Responses at 3. The agency stated that it would not identify a specific number or type of subtasks that must be met. FOPR amend. 1 at 76.

The contracting officer documented his justification for using the LPTA source selection procedure during the agency's corrective action. COS at 50; AR, Tab 40, LPTA D&F Memorandum. The contracting officer found that:

The Government describes its minimum requirements clearly and comprehensively and expresses them in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers. Offerors shall clearly demonstrate past technical experience in a flying operation environment and provide staffing plans that describes their proposed approaches for accomplishing the tasks within paragraphs 3.1 and 3.4 of the PWS, but they will provide nothing additional that would add complexity beyond that minimum requirement.

AR, Tab 40, LPTA D&F Memorandum ¶ 1.

Here, we cannot conclude that the FOPR reasonably defines the minimum requirements for the pilot augmentation services “clearly and comprehensively” and expresses them “in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers” as required by the DFARS. DFARS 215.101-2-70(a)(1)(i). The FOPR itself provides no guidance regarding which of the 46 pages of PWS subtasks an offeror must demonstrate past technical experience performing to be rated acceptable and the Air Force’s responses to offerors’ questions provide little meaningful clarification. In this connection, the Air Force explains that an offeror need not demonstrate past technical experience in all PWS subtasks but fails to identify either which subtasks or how many subtasks must be met to be acceptable. Indeed, the agency explicitly stated in amendment 1 that it “will not set a stipulation that any specific number of subtasks be met.” FOPR amend. 1 at 76. Moreover, in the LPTA D&F memorandum, the contracting officer provides no explanation as to the minimum requirements and simply restates the FOPR evaluation criteria in finding that the DFARS criteria have been met. AR, Tab 40, LPTA D&F Memorandum ¶ 1.

Contrary to the agency’s assertion, the FOPR does not provide measurable minimum requirements to offerors and the D&F memorandum provides no further explanation as to the minimum requirements. Without these minimum standards, offerors are left to guess what combination of and how many subtasks will meet the threshold for technical acceptability. We find therefore that the FOPR fails to meet the criterion set forth at DFARS section 215.101-2-70(a)(1)(i).

Value from Exceeding Minimum Requirements

Next, Mission Essential argues that the FOPR does not satisfy the DFARS criterion that “[n]o, or minimal value will be realized from a proposal that exceeds the minimum technical or performance requirements.” Comments at 49 (quoting DFARS 215.101-2-70(a)(1)(ii)); *see also* Protest at 37-38. The protester contends that the FOPR seeks unique approaches, which clearly shows that the agency “can obtain additional value” from offerors’ different approaches, including efficiencies and cost savings that Mission Essential can provide. Comments at 50. Mission Essential further asserts that the record cannot withstand logical scrutiny and does not support the

agency's conclusion that it will derive no value from a proposal exceeding minimum requirements. Comments at 49-51.

As detailed above, the FOPR instructs offerors to "describe their unique plan" for performing the tasks in PWS paragraphs 3.1 and 3.4 and provides the agency will evaluate their "unique planned approach." The FOPR also supplies offerors with estimated labor categories and skill levels but not labor hours, leaving offerors to propose labor hours and rates appropriate for their proposed approaches. FOPR amend. 2 at 84, 148-49.

The contracting officer's LPTA memorandum found offerors' staffing plans describing their proposed approaches for performing the PWS subtasks "will provide nothing additional that would add complexity beyond that minimum requirement" and that the agency "would realize no value from a proposal that exceeds [this FOPR's] minimum technical or performance requirements." AR, Tab 40, LPTA D&F Memorandum ¶¶ 1-2.

In response to the protest, the contracting officer states that "[t]he Government did not elect to require Offerors to propose unique approaches or meet new requirements with speculative benefit to the Government." COS at 52. The agency maintains that

in viewing the requirement, particularly the specified subtasks, it is clear that the agency is not soliciting alternatives or increased knowledge, skills, and abilities. The agency's approach, including the [past technical experience] and staffing plan subfactors, is tailored to meeting the minimum requirements, considering budgetary resources and limited or no value of personnel that exceed the minimum requirements.

MOL at 37.

Based upon our review of the record, we find that the agency's justification that it will realize minimal or no value from a proposal exceeding the minimum requirements cannot withstand logical scrutiny. First, the solicitation itself invites offerors to submit staffing plans with "unique" approaches, indicating the agency believes some value can be gained from a proposal that exceeds the minimum requirements. Second, the D&F provides no explanation as to why the Air Force would not obtain value from different approaches to performing the tasks in PWS paragraphs 3.1 and 3.4. Instead, the D&F includes a bald declaration that the agency will receive no value from proposals exceeding minimum requirements without further explanation or elaboration. This is insufficient to establish that the agency's justification is reasonable. *Compare Coast to Coast Computer Prods., Inc.*, B-419624, June 28, 2021, 2021 CPD ¶ 237 at 7 (denying protest where the contracting officer discusses various PWS requirements such as "printing volumes, delivery times, extent of training, availability levels, networking, and security" in the D&F memorandum in finding that no value is realized when proposals exceed the minimum requirements). Accordingly, we find that the solicitation does not meet the criterion under DFARS section 215.101-2-70(a)(1)(ii) that the agency will obtain no, or minimal, value from proposals exceeding minimum requirements.

Life-Cycle Costs

Mission Essential also argues that the FOPR fails to meet the criteria under DFARS section 215.101-2-70(a)(1)(vii) because the contract file does not, and cannot, contain a determination from the requiring activity that the lowest price reflects full life-cycle costs. Comments at 51-53. The protester argues both a procedural failure and a substantive failure. Regarding the procedural failure, the protester asserts that no determination from the requiring activity, USAFE-AFAFRICA headquarters, exists in the contract file and so this criterion is not met. *Id.* at 51-52. For the substantive failure, Mission Essential contends that the lowest-priced offer is incapable of reflecting the full life-cycle costs because the task order to be issued includes several cost-reimbursement CLINs for which the full costs are unknown at this time. *Id.* at 52-53.

As noted above, under DFARS section 215.101-2-70(a)(1)(vii), the contract file must contain “a determination that the lowest price reflects full life-cycle costs . . . of the product(s) or service(s) being acquired (see PGI 215.101-2-70(a)(1)(vii) for information on obtaining this determination).”⁹ DFARS section 215.101-2-70(a)(1)(vii). Full life-cycle costs are “the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.” FAR 7.101. The contracting officer’s LPTA memorandum includes the following explanation regarding life cycle costs:

As the Government will award this task order as a Firm-Fixed Price (FFP) effort with minimal cost reimbursable CLINs associated with Other Direct Costs and Travel, and in accordance with PGI 215.101-2-70, the resulting FFP award to the offeror whose proposal represents the Lowest Price Technically Acceptable solution will absorb the full life-cycle costs (as defined at FAR 7.101) of the services being acquired.

AR, Tab 40, LPTA D&F Memorandum ¶ 7.

In response to the protest, the Air Force proffered an explanation at odds with the above explanation, maintaining that the contracting officer documented his justification for using LPTA procedures in accordance with DFARS section 215.101-2-70(a)(1) except for the full life-cycle costs element. MOL at 35. According to the agency, the contracting officer “could not make the necessary life-cycle cost determination, as described in PGI 215.101-2-70, that ‘the lowest priced offer reflects full life-cycle costs for the supply or service’ until the Government selected an awardee, thereby determining the lowest price.” *Id.* The agency argues that because full life-cycle costs are equal to the contract costs when services are being procured, “the expectation is that the lowest-price offer will reflect full life-cycle costs” and contends that “[a]lthough

⁹ PGI 215.101-2-70(a)(1)(vii) requires the contracting officer to include in the contract file “a determination from the requiring activity that the lowest price offer reflects full life-cycle costs.”

the [contracting officer] did not make the decision upfront, it is difficult to imagine a situation where this element would not be met.” *Id.* at 36 & n.10.

We find the agency’s justification inadequate. As an initial point, the contract file lacks the required determination from the requiring activity, USAFE-AFAFRICA headquarters, in accordance with DFARS section 215.101-2-70(a)(1)(vii). This procurement is managed by the 764 ESS/PKB contracting activity and although the LPTA D&F memorandum includes the contracting officer’s determination that the lowest-priced offer represents the full life-cycle costs, the regulations do not allow the agency to substitute the required determination from the requiring activity with a contracting officer’s determination. FOPR amend. 2 at 3.

We also find both the explanation provided by the contracting officer in the D&F memorandum and the explanation provided by the agency in its MOL to be unreasonable. The D&F memorandum does not provide a reasonable explanation that the lowest-price offer would reflect the full life-cycle of costs where the task order includes several cost-reimbursement CLINs, e.g., travel (CLIN 0011); other direct costs, including relocation expenses, overseas education, Defense Base Act insurance, and cost of living allowances (CLIN 0012); surge support (CLIN 0017); DOCPER differential (CLIN 018); and additional full-time employees (CLIN 001X). *Id.* at 149. Nothing in the D&F explains how the lowest-price offer would reflect the full life-cycle of costs when several CLINS do not have defined and finite costs at the time of award.

The explanation provided by the agency in response to the protest is similarly unavailing. We accord greater weight to contemporaneous materials than to representations made in response to protest contentions. *AttainX, Inc.*, B-421216, B-421216.2, Jan. 23, 2023, 2023 CPD ¶ 45 at 15. Furthermore, we give little weight to post-protest statements that are inconsistent with the contemporaneous record. *Id.* Here, the contemporaneous record does not support the agency’s contention that contracting officer did not and could not make “the necessary life-cycle cost determination” until the awardee was selected. MOL at 35. Indeed, the LPTA D&F memorandum contradicts this statement and the contracting officer found that the LPTA “solution will absorb the full life-cycle costs . . . of the services being acquired.” AR, Tab 40, LPTA D&F Memorandum ¶ 7. Accordingly, we cannot conclude that the Air Force’s explanation about the life-cycle costs is reasonable.¹⁰ Because the record does not include the determination from USAFE-AFAFRICA headquarters that the lowest-price offeror reflects the full life-cycle of costs for this task order and the agency’s

¹⁰ Assuming for argument’s sake, that we did give credence to the Air Force’s post-protest explanations, we would still find that the agency failed to satisfy the DFARS requirements. DFARS section 215.101-2-70(a)(1) permits LPTA criteria to be used only when all eight elements are met. The Air Force effectively concedes that the contracting officer is unable to make the full life-cycle costs determination and establishes that one of the LPTA criteria is not met. The agency therefore cannot demonstrate it meets the DFARS requirements that would allow the agency to use LPTA source selection procedures.

explanation is unreasonable, we conclude that the FOPR does not meet this criterion under DFARS section 215.101-2-70(a)(1)(vii).

In sum, we conclude that the D&F memorandum failed to provide a reasonable explanation of the circumstances justifying the use of LPTA award criteria under DFARS section 215.101-2-70(a)(1). We further conclude that the solicitation does not satisfy three of the criteria that the DFARS requires to be met when the agency is considering the use of the LPTA source selection process. DFARS section 215.101-2-70(a)(1). Accordingly, we sustain the protest.

Avoidance of LPTA Criteria to the Maximum Extent Practicable

Next, we turn to the protester's challenge that the Air Force has failed to avoid LPTA source selection procedures to the maximum extent practicable. Mission Essential argues that the procurement seeks "knowledge-based professional services" and therefore, the Air Force must avoid using LPTA award criteria where it is practical to do so. Protest at 38; Comments at 54. Mission Essential contends that the D&F memorandum lacks any rationale as to why using procedures other than LPTA are impractical. Comments at 54. For the reasons that follow, we also sustain this ground of protest.

In addition to the eight enumerated factors in DFARS section 215.101-2-70(a)(1), contracting agencies are required to "avoid, to the maximum extent practicable," the use of LPTA procedures for procurements that are "predominantly for the acquisition" of "other knowledge-based professional services."¹¹ DFARS 215.101-2-70(a)(2)-(a)(2)(i).

In response to this protest, the Air Force contends that the DFARS section does not prohibit using LPTA criteria and maintains there are "legitimate circumstances where the LPTA strategy is beneficial to the Government." COS at 49-50; MOL at 37. The agency also contends that using an LPTA methodology is appropriate for this acquisition, has been used for similar task order acquisitions under the A&AS V IDIQ, and is consistent with the IDIQ and DFARS. COS at 49.

The agency explains that in deciding which acquisition approach is appropriate for this procurement, it used the complexity analysis tool (CAT) included in the A&AS V IDIQ ordering guide to assist with decentralized ordering. *Id.* at 50; MOL at 35; *see also* AR, Tab 24, A&AS V IDIQ Ordering Guide at 22. The CAT provides questions about the procurement that are designed to "evaluate various risk factors" and based on the contracting team's answers, the tool will generate a recommended approach for the solicitation. COS at 50; AR, Tab 24, A&AS V IDIQ Ordering Guide at 22; *see also* AR, Tab 16, CAT Documentation. The agency does not require use of the CAT, but it is highly recommended. COS at 50; AR, Tab 24, A&AS V IDIQ Ordering Guide at 22. For

¹¹ Neither the FAR nor the DFARS define the term "knowledge-based professional services."

this acquisition, based on the information provided by the contracting team, the CAT recommended an LPTA approach. COS at 50; AR, Tab 16, CAT Documentation at 1.

The contracting officer's D&F memorandum recognized that the services to be acquired by this FOPR "could be seen as 'other knowledge-based professional services.'" AR, Tab 40, LPTA D&F Memorandum ¶ 8. The memorandum also recognized that DFARS section 215-101-2-70(a)(2)(i) directed agencies "to avoid the use of LPTA 'to the maximum extent practicable.'" AR, Tab 40, LPTA D&F Memorandum ¶ 8. The contracting officer noted that the regulation "did not completely prohibit" use of LPTA procedures, however, explaining as follows:

The Government did not select the LPTA fair opportunity decision process for the procurement of Pilot Augmentation Support services without thoroughly considering all evaluation options available in relation to the services being acquired. Considering paragraphs 1-7 of this memo, the applicable market research, and the use of the Complexity Analysis Tool as prescribed in the A&AS V Ordering Guide, the Government determined LPTA to be the most viable and efficient means of evaluating the proposal submissions for this requirement. The Government determined that LPTA does not unduly hinder the Prime awardees under A&AS V from submitting competitive proposals, nor conflict with any regulatory guidance.¹²

Id. at ¶ 9.

In response to this protest, the agency explains LPTA award methodology for task orders is expressly allowed in the IDIQ ordering guide. COS at 51; MOL at 35-36. The agency also points out that it has successfully used LPTA criteria for previously issued task orders, including task orders issued to Mission Essential. COS at 51. In the agency's view, the pilot augmentation requirements are appropriate for award using LPTA criteria and the agency has a reasonable basis to use LPTA source selection procedures here consistent with the A&AS V IDIQ and the DFARS. COS at 51-54; MOL at 36, 38.

Here, the record does not demonstrate that the Air Force has avoided the use of LPTA award criteria for the pilot augmentation services solicitation "to the maximum extent practicable" and we find the agency's justification for awarding on an LPTA basis inadequate and unreasonable. DFARS 215.101-2-70(a)(2). There is no dispute in this protest that the FOPR seeks to acquire knowledge-based professional services and therefore, we need only resolve whether the agency reasonably avoided using LPTA methodology "to the maximum extent practicable."

¹² Paragraphs 1 through 7 of the D&F memorandum address the contracting officer's findings for DFARS section 215.101-2-70(a)(1)(i)-(vii). AR, Tab 40, LPTA D&F Memorandum.

Nothing in the record or the agency's protest arguments explain why it would be impractical for the Air Force to use other than LPTA procedures for this solicitation. The D&F memorandum asserts that the use of LPTA award criteria is "the most viable and efficient means of evaluating the proposal submissions," but this is not the standard set by the DFARS, which prohibits the use of LPTA procedures unless it is impractical to do so. AR, Tab 40, LPTA D&F Memorandum ¶ 9. The agency provides no explanation as to why it is impractical to use a different source selection procedure. *Compare Verizon Bus. Net. Servs., Inc., supra.* (finding the agency reasonably explained why it would not receive any additional value from proposals exceeding the minimum requirements and therefore, it would be impractical to avoid using LPTA award criteria).

Moreover, as discussed above, the agency failed to provide a reasonable explanation of the circumstances justifying the use of LPTA source selection procedures as required under DFARS section 215.101-2-70(a)(1). In this connection, the solicitation does not clearly and comprehensively describe the minimum requirements in terms of measurable performance objectives to determine the acceptability of proposals. The agency also fails to explain how no, or minimal value, will be realized from proposals exceeding the minimum requirements, when the FOPR seeks "unique" approaches and directs offerors not to merely restate the PWS. Further, the contract file does not include the mandatory documentation from the requiring activity and the agency does not explain how the LPTA solicitation reflects the full life-cycle of costs when the task order includes several cost-reimbursement CLINs for which the total cost is presently unknown.

On this record, the agency's justification for using LPTA source selection procedures is unreasonable and does not withstand logical scrutiny. While the A&AS V IDIQ permits the use of LPTA task orders, this does not establish that they are appropriate for every solicitation; indeed, the ordering guide provides for a wide variety of source selection approaches and instructions for using each method. AR, Tab 24, A&AS V IDIQ Ordering Guide at 22-25.

We are also unpersuaded that using LPTA award criteria is reasonable because this is the acquisition approach recommended by the CAT. The agency developed this tool to assist in evaluating the risk factors of each solicitation; however, this tool appears to categorize the complexity of a procurement and not whether it would be impracticable to use LPTA methodology for a particular procurement. In this regard, the CAT provides a complexity analysis based on 11 questions about the scope, cost, and resources of the acquisition. AR, Tab 16, CAT Documentation at 1. Answers are numerical inputs that range between 0 and 5 depending upon the question. For example, one question asks, "Has the requirement been defined?" and provides four answers with numerical inputs that range from 0 to 4. *Id.* at 2. Another question asks, "Is this a follow on effort?" with yes being equal to 2 and no being equal to 4. *Id.* The CAT determines the complexity of the acquisition based on the number generated after all the questions are answered. According to the tool, the lower the number, the lower the complexity. AR, Tab 24, A&AS V IDIQ Ordering Guide at 22 (low complexity is below 2.0, medium complexity is between 2.0 and 3.5, and high complexity is above 3.5). Based on this spectrum, LPTA

is the recommended approach for low complexity procurements, whereas best-value tradeoff is reserved for high complexity procurements. *Id.*

For this solicitation, and as result of the contracting team's answers, the CAT recommended using LPTA award criteria because the project complexity rating was 1.9975, which the CAT identified as low complexity. AR, Tab 16, CAT Documentation at 1. Relevant to this procurement, one of the questions is, "What is the importance of Past Performance for the requirement?" with two available answers--low (valued at 2) or high (valued at 4). AR, Tab 16, CAT Documentation at 2. For this question, the agency answered low and input 2. *Id.* We first note that when the A&AS V IDIQ contract was awarded, the agency did not evaluate any offeror's past performance, and the ordering guide provides that past performance may be evaluated for any FOPRs at the contracting officer's discretion. AR, Tab 24, A&AS V IDIQ Ordering Guide at 23. We also note that the ordering guide requires LPTA acquisitions to use past technical experience as the technical evaluation criterion. *Id.* Here, then, the FOPR does not evaluate past performance and the only technical factor to be evaluated is past experience. Even though past experience is different from past performance, we question whether the agency's response that past performance is of low importance is reasonable. Under the circumstances, we also have misgivings about whether the question itself has any value as an analysis factor where past performance was not evaluated as part of the A&AS V IDIQ and is not a required evaluation criterion for task order competitions.¹³ The record includes no explanation of the tool's findings, and we think it is unreasonable for the agency simply to rely on the recommended approach generated by the CAT as its rationale and justification for using an LPTA approach.

In addition, we do not find the fact that the agency has used LPTA procedures in other task orders, even task orders awarded to Mission Essential, to be probative in our review here. As we have consistently noted, each procurement stands alone, and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. *See, e.g., Sayers & Assocs. Corp.*, B-418374, Mar. 30, 2020, 2020 CPD ¶ 115 at 5-6 n.9.

On this record, we find no basis to conclude that the agency's use of LPTA source selection procedures challenged by Mission Essential is reasonable. As discussed above, the agency has not reasonably explained why it is impractical to use other than LPTA award criteria. We therefore sustain the protest on this basis.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the protested solicitation improperly provides for award of a task order on an LPTA basis. We also conclude that Mission

¹³ We also note that if the agency had input high importance (4) for past performance importance, it is likely that the CAT project complexity level would have been greater than 1.9975, and thus, likely greater than 2.0, leading to a different recommended acquisition approach.

Essential is competitively prejudiced by this award methodology because the improper LPTA source selection methodology undermines its ability to compete fairly. Protest at 39-40; see *Mechanix Wear, Inc.*, B-416704, Nov. 19, 2018, 2018 CPD ¶ 395 at 7 (observing that GAO resolves “any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis to sustain a protest” and sustaining protest where solicitation defect impacted protester’s ability to compete); see *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12 (competitive prejudice occurs where the challenged terms place the protester at a competitive disadvantage or otherwise affect the protester’s ability to compete). Accordingly, we recommend that the agency issue a revised FOPR that is compliant with DFARS section 215.101-2-70 and request revised proposals. Should the agency determine that an LPTA source selection methodology does not meet its needs, the agency should revise the solicitation’s source selection methodology and obtain revised proposals as appropriate.

We also recommend that the agency reimburse the protester’s reasonable costs associated with filing and pursuing its protest, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester’s certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

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