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Decision

Matter of: Patriot Group International, Inc.

File: B-422969.2; B-422969.3

Date: December 30, 2024

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DIGEST

1. Protest alleging the agency's discussions were misleading and coercive is denied where the agency addressed legitimate concerns in the protester's proposal and provided the protester with an opportunity to respond to those concerns.
2. Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
3. Protest alleging that the agency failed to consider multiple performance failures on the incumbent contract is dismissed as legally insufficient where the solicitation did not provide for the evaluation of past performance.
4. Protest that the terms of the solicitation are latently ambiguous is dismissed as untimely where the protester failed to raise its argument within 10 calendar days of when it knew, or should have known, of the basis for its protest.
5. Protest that the agency failed to conduct a proper best-value tradeoff analysis is denied where protester fails to demonstrate that the tradeoff was unreasonable.

DECISION

Patriot Group International, Inc. (PGI), of Warrenton, Virginia, protests the issuance of a task order to PAE Applied Technologies LLC (Amentum), of Germantown, Maryland, under fair opportunity proposal request (FOPR) No. FA4890 24 R CN02.¹ The Department of the Air Force issued the solicitation for services in support of counterdrug, counter-organized crime, and counterterrorism missions conducted by federal law enforcement agencies. The protester contends that the agency conducted misleading and coercive discussions, unreasonably evaluated the proposals, and failed to conduct a proper best-value tradeoff analysis. In a supplemental protest, the protester further argues that the solicitation's evaluation criteria contained a latent ambiguity.

We deny the protest.

BACKGROUND

On April 15, 2024, the agency issued the solicitation in accordance with Federal Acquisition Regulation (FAR) section 16.505 to the eight contract holders under the agency's Counter Narcotics and Global Threats Operations, Logistics, and Training multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR) Tab 1, Contracting Officer's Statement (COS) at 2; AR, Tab 3, FOPR at 264.² The solicitation contemplated the issuance of a fixed-price, level-of-effort task order with a transition period of 4 months, a base period of 12 months, seven 12-month option periods, and a 6-month option to extend services. FOPR at 264-265. The due date for proposals was May 15, 2024. *Id.* at 265.

¹ PAE Applied Technologies LLC bought Amentum in 2022. See Intervenor's Comments at 1 n.1. The protester refers to the awardee as Amentum, and we do likewise in this decision.

² The agency amended the solicitation twice; all citations reference the Adobe PDF page number of the final amended version.

The solicitation provided for the evaluation of proposals based on the following evaluation factors: technical and price.³ *Id.* at 269-272. The technical factor consisted of the following two equally weighted subfactors: management/staffing and technical approach/mission understanding. *Id.* at 270-271. For the management/staffing subfactor, the solicitation required offerors to address two criteria. *Id.* For the first criterion, the solicitation required offerors to detail their process for recruiting, hiring, managing, and retaining the required personnel. *Id.* Specifically, the solicitation required offerors to describe (1) their plan for ensuring that fully qualified staff would be in place at the start of the base period, (2) their compensation packages and any incentives to minimize employee turnover, and (3) any risks to retention and their plan to mitigate those risks. *Id.* For the second criterion, the solicitation required offerors to provide their strategy for managing vacancies, notifying the agency of any imminent vacancies, and tracking and reporting personnel status information. *Id.* Offerors were also to describe their plan to mitigate personnel disruption and turnover. *Id.*

For the technical approach/mission understanding subfactor, the solicitation required offerors to address three criteria. *Id.* For the first criterion, the solicitation required offerors to provide their understanding and technical approach in response to the counterthreat finance requirements under the performance work statement (PWS). *Id.* For the second criterion, the solicitation required offerors to describe their strategy for providing personnel with the required qualifications for all tasks under the PWS. *Id.* In the event the key personnel exceeded the required qualifications, the solicitation required the offeror to describe whether that position would be permanently filled by an individual whose qualifications exceeded the requirements and the anticipated benefit to the agency. *Id.* For the third criterion, the solicitation required offerors to describe their recent experience that was similar in magnitude and scope to the current requirement. *Id.* The solicitation further required offerors to provide details regarding experience with credential/certification support services for large numbers of analysts. *Id.*

The solicitation provided that the agency would evaluate price proposals for completeness, reasonableness, and balanced pricing. *Id.* at 272. The solicitation further provided that price proposals were to provide a compensation plan for professional employees in accordance with FAR provision 52.222-46. *Id.* The

³ The solicitation provided that proposals would receive a technical rating of outstanding, good, acceptable, or unacceptable. FOPR at 270. A rating of outstanding indicated that the proposal presented an exceptional approach and understanding of the requirements, contained multiple strengths, and the risk of unsuccessful performance was low. *Id.* A rating of good indicated that the proposal presented a thorough approach and understanding of the requirements, contained at least one strength, and the risk of unsuccessful performance was low to moderate. *Id.* A rating of acceptable indicated that the proposal presented an adequate approach and understanding of the requirements, and the risk of unsuccessful performance was no worse than moderate. *Id.* A rating of unacceptable indicated that the proposal did not meet the requirements of the solicitation, contained one or more deficiencies, and the risk of unsuccessful performance was unacceptable. *Id.*

solicitation noted that the agency might view compensation plans that were unrealistically low or not in reasonable relationship to the job categories as evidence of a failure to understand the requirements. *Id.*

The solicitation provided for issuance of the task order on a best-value tradeoff basis where technical was significantly more important than price. *Id.* at 267.

Initial Evaluation and Interchanges

The agency received three proposals by the deadline on May 15, 2024, including proposals from PGI and Amentum. COS at 10. The initial evaluation results for PGI's proposal were as follows:

	PGI
Management/Staffing	Good
Technical Approach/ Mission Understanding	Acceptable
Total Evaluated Price	\$236,625,791

AR, Tab 10, Fair Opportunity Decision Document (FODD) at 7. Following the initial evaluation, the agency conducted what it referred to as "interchanges" with PGI. COS at 11. The agency issued one technical interchange notice and six pricing interchange notices to PGI. *Id.* at 11. The only interchange relevant to this protest is the second pricing interchange notice, which concerned PGI's compensation for professional employees. Protest at 12; AR, Tab 7, Pricing Interchange Notice and PGI Response at 7. In this regard, the notice advised PGI that its direct labor rates for certain labor categories were significantly lower than the current compensation on the contract, the competitive prices received in response to the subject solicitation, and the independent government estimate. *Id.* The notice also advised PGI that it failed to provide any basis of estimate to address the discrepancy. *Id.* PGI responded to this notice by providing a basis for its direct labor rates and increasing the direct labor rates for all the positions identified by the agency. *Id.* at 8. The agency took no exception to PGI's response as PGI's revised pricing sheet increased its direct labor rates. FODD at 65.

Final Evaluation Results and Current Protest

Following the interchanges, the final evaluation results for PGI and Amentum were as follows:

	PGI	Amentum
Management/Staffing	Good	Good
Technical Approach/ Mission Understanding	Acceptable	Outstanding
Total Evaluated Price	\$246,532,254	\$247,651,066

AR, Tab 10, FODD at 78. The final evaluation also noted that PGI’s proposal received one strength under the management/staffing subfactor and no strengths under the technical approach/mission understanding subfactor.⁴ *Id.* As a result of the pricing interchanges, PGI increased its total evaluated price from \$236,625,791 to \$246,532,254. *See id.* at 7, 78.

Based on its evaluation of proposals, the agency concluded that Amentum’s proposal represented the best value to the agency. *Id.* at 80. The agency issued an unsuccessful offeror letter to PGI on September 6. AR, Tab 11, Unsuccessful Offeror Letter at 1. PGI timely requested a debriefing, which the agency provided on September 10. AR, Tab 12, Debrief at 1. PGI submitted questions in response to the debriefing on September 12, to which the agency responded on September 16. AR, Tab 13, PGI Debrief Questions at 1; AR, Tab 14, Agency Response to Debriefing Questions at 1. This protest followed.⁵

⁴ The solicitation defined a strength as an aspect of the offeror’s proposal that has merit or exceeds performance or capability requirements in a way that would be advantageous to the agency during contract performance. FOPR at 67. The solicitation defined a weakness as a flaw in the proposal that increases the risk of unsuccessful contract performance. *Id.* The solicitation defined a deficiency as a material failure of the proposal to meet an agency requirement that increases the risk of unsuccessful contract performance to an unacceptable level. *Id.*

⁵ The awarded value of the task order at issue exceeds \$25 million. Accordingly, at the time this protest was filed on September 23, 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 U.S. Code. 10 U.S.C. § 3406(f)(1)(B); see National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, ____ Stat. ____ § 885 (2024) (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).

DISCUSSION

PGI contends that the agency unreasonably failed to assign its proposal several strengths. Protest at 16-24. PGI further argues that the agency failed to address, what PGI alleges were Amentum's multiple performance failures with its performance of the incumbent contract. *Id.* at 25. PGI also contends that the agency engaged in misleading discussions when it informed PGI that its total professional compensation was unrealistic. *Id.* at 26. In its supplemental protest, PGI argues that the terms of the solicitation contained a latent ambiguity. Comments and Supp. Protest at 21. Last, PGI challenges the agency's best-value tradeoff decision as unreasonable. Protest at 28. For the reasons discussed below, we deny the protest.⁶

Challenge to the Evaluation of PGI's Technical Proposal

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *General Dynamics Info. Tech., Inc.*, B-421290, B-421290.2, Mar. 1, 2023, 2023 CPD ¶ 60 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.*

PGI first contends that the agency unreasonably failed to assign its proposal strengths under both technical subfactors for proposing comprehensive training for contract personnel. Protest at 17. According to PGI, its proposal should have received a strength for this training because its training is well-organized, cost-effective, and an improvement upon the training, or lack thereof, currently provided by the incumbent. *Id.* at 19. PGI also argues that the agency's statement that this training demonstrated that PGI would be able "to ensure that employees possess necessary skills and expertise" supports its argument that its proposal deserved a strength. *Id.* at 20. The agency argues that it properly did not assign PGI's proposal a strength because providing comprehensive training merely met the requirements of the solicitation. Memorandum of Law (MOL) at 11.

Based on the record, we have no basis to conclude that the agency's evaluation was unreasonable here. Section 2.4.2.1 of the performance work statement (PWS) for the underlying contract requirements indicated that the contractor is to "provide and maintain a sufficiently trained workforce." AR, Tab 5, Contract PWS at 15. The management/staffing subfactor in the FOPR here provided that offerors were to "ensure that fully qualified personnel . . . are in place at the requisite locations to meet full operational performance." FOPR at 271. The technical approach/mission

⁶ Although we do not address every protest ground, we have considered them and find none to be meritorious.

understanding subfactor similarly provided that offerors were to “effectively align contractor personnel with requisite qualifications . . . for all tasks under the PWS.” *Id.* Accordingly, PGI’s decision to provide comprehensive training fits squarely within the requirements to ensure that personnel are sufficiently trained and fully qualified. We note also that the conclusion in the FODD that PGI would ensure that employees possessed the “necessary skills” does not indicate that PGI’s proposed training exceeded the requirements. Providing something necessary, by definition, does not exceed a requirement; it satisfies the requirement.

PGI next argues that the agency should have assigned its proposal a strength for its counterthreat finance analytical techniques that enable it to respond to adversarial financial networks with precision and efficiency. Protest at 20. According to PGI, this “enhanced capability” exceeds solicitation requirements and will provide “obvious benefits” to the agency. *Id.* The agency responds that PGI’s proposal failed to provide sufficient information in describing these techniques. MOL at 11. Instead, the agency argues, PGI’s proposal “only contained one conclusory sentence” that these techniques would be beneficial to the agency. *Id.* at 12. PGI responds that its proprietary techniques “were present throughout all of its proposal,” citing its [DELETED] and [DELETED]. Comments and Supp. Protest at 11-12.

We agree with the agency that PGI has failed to demonstrate how its proposal merited a strength. In describing its counterthreat finance analytical techniques, PGI’s proposal provided that it “developed proprietary analytical techniques that inform [PGI’s] technical approach and enable [PGI] to identify, target, disrupt, and degrade adversaries’ financial networks with precision and efficiency.” AR, Tab 6, PGI Proposal at 92. We agree with the agency that this sentence is conclusory and fails to rise to the solicitation’s definition of a strength. Although PGI contends that its proprietary techniques were present throughout its proposal, PGI has not shown how its decision to provide software training and trained analysts qualified as “proprietary techniques.” Instead, these areas appear to be, as the agency points out, PGI’s strategy for meeting the requirements. MOL at 12. This protest ground is denied.⁷

⁷ We note that PGI raises similar arguments concerning other aspects of its proposal that the agency purportedly overlooked. See Protest at 21-24 (arguing that the agency unreasonably failed to assign its proposal strengths for the obvious advantages of its [DELETED], letters of intent, and uniquely qualified leadership). Much like the arguments that we have already addressed, PGI’s arguments regarding these purported strengths do not identify information overlooked by the agency in its evaluation; rather, the protester disagrees with the agency’s valuation of these features in its proposal. For instance, PGI contends that the agency should have assigned its proposal a strength for the qualifications and experience of its program manager. *Id.* at 24. PGI does not argue that the agency failed to consider the experience and qualifications of this program manager; it instead disagrees with the agency’s valuation of them, arguing that it was “inexplicable” for the agency not to assign its proposal a strength. See *id.* Such disagreements do not provide a basis to sustain a protest. Therefore, we deny these arguments.

Challenge to Alleged Performance Issues on Incumbent Contract

PGI next contends that the agency failed to consider Amentum's "[m]ultiple [p]erformance [f]ailures" on the incumbent contract. Protest at 25. Based on these performance failures, PGI contends that it was unreasonable for the agency to assign Amentum a rating of "[g]ood" under the management/staffing subfactor and a rating of "[o]utstanding" under the technical approach/mission understanding subfactor. *Id.* The agency requested dismissal of this argument on the basis that it is factually and legally insufficient. Req. for Dismissal at 2. More specifically, the agency argued that the allegation contemplates evaluation criteria not contained in the solicitation and rests on speculation regarding Amentum's technical solution. *Id.* We agreed with the agency and granted the request for dismissal prior to the submission of the agency report. See Electronic Protest Docketing System No. 22

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) and (f). 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. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Where a protest fails to set forth sufficient factual and legal grounds for protest, we will dismiss the protest. 4 C.F.R. § 21.1(i).

Although PGI contends that it learned of Amentum's performance failures "based on the interviews conducted by PGI of over 100 government and contractor personnel working on the incumbent effort," Protest at 25, the solicitation did not contemplate the evaluation of an offeror's past performance. See FOPR at 149-153. Additionally, the solicitation provided that the technical evaluation would focus "on the strengths, deficiencies, and weaknesses in the offeror's proposal." FOPR at 150. Therefore, we dismiss PGI's argument that the agency failed to consider outside information bearing on the incumbent's past performance as it fails to state a legally sufficient basis of protest.

Challenge to the Agency's Discussions

PGI next contends that the agency engaged in misleading discussions when it issued a pricing interchange notice to PGI concerning its low direct labor rates. Protest at 26. Specifically, PGI argues that its initial proposed price was realistic, a claim it supports by comparing its initial total evaluated price with the total evaluated price submitted by other offerors. *Id.* at 27. The agency responds that it properly raised a concern regarding PGI's low direct labor rates. MOL at 23. Moreover, the agency argues, PGI's protest makes clear that it is conflating the agency's evaluated price and professional compensation analyses. *Id.* at 24.

The regulations concerning discussions under FAR part 15, which pertain to

negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, such as the procurement for the task order here. *Vencore Servs. & Sols., Inc.*, B-412949, B-412949.2, July 18, 2016, 2016 CPD ¶ 346 at 5. In this regard, FAR section 16.505 does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *Id.* In discussing an agency's obligations in conducting discussions under FAR part 15, we have held that an agency may not mislead an offeror into responding in a manner that does not address the agency's concerns or misinform the offeror concerning a problem with its proposal or about the agency's requirements. *Id.* That said, we will not find that the agency engaged in misleading discussions where the agency accurately raised evaluation concerns. *General Dynamics Info. Tech., Inc.*, B-417616.2 *et al.*, Mar. 31, 2020, 2020 CPD ¶ 132 at 12.

Based on the record, we have no basis to conclude that the agency engaged in misleading discussions. As mentioned above, when addressing a protest ground that the agency engaged in misleading discussions, the relevant inquiry is whether the agency accurately raised evaluation concerns. *See General Dynamics Info. Tech., Inc., supra.* The pricing interchange notice provided that the "total professional compensation including direct labor for some positions appears to be unrealistically low" and listed each of the positions with labor rates that the agency found to be unrealistic. AR, Tab 7, Pricing Interchange Notice and PGI Response at 7. The notice further noted that PGI's proposal failed to provide "sufficient detail to address or explain this discrepancy." *Id. Id.* Given these unrealistic direct labor rates, the agency informed PGI that its compensation may fail to comply with FAR provision 52.222-46, which could result in the removal of PGI's proposal from the competition.⁸ *Id.* The protester has not demonstrated that the evaluation concern raised by the agency--*i.e.*, that some of its direct labor rates appeared to be unrealistic--was inaccurate.

PGI also fails to acknowledge the difference between total evaluated price and total professional compensation. The interchange notice issued by the agency did not address PGI's total evaluated price; it addressed only specific direct labor rates within the context of PGI's professional compensation. *See AR, Tab 7, Pricing Interchange Notice and PGI Response at 7.* Accordingly, PGI's comparison of the total evaluated prices among proposals is inapposite as this comparison has no bearing on whether the agency properly concluded that PGI's direct labor rates were unrealistic. Rather than addressing that finding, this protest ground seeks to rebut a conclusion that the agency never made. This protest ground is thus denied.

PGI also alleges that the agency coerced PGI into increasing its direct labor rates. *See Protest at 28.* Our Office has explained that an agency may not coerce an offeror into raising its prices or altering any other aspect of its proposal. *General Dynamics Info.*

⁸ FAR provision 52.222-46, which was incorporated in the solicitation, provided, in relevant part, that unrealistic professional compensation levels may result in the elimination of the proposal from the competition.

Tech., Inc., supra at 12. That said, our Office will not find coercion in discussions where the agency, in good faith, provides accurate information to an offeror and leaves it to the offeror's discretion regarding how to respond. See *id.* at 12-13 (concluding that there was no coercion in discussions where the agency did not "mandate, or require, that [the protester] raise its direct labor rates). We have no basis to conclude that the agency's discussions were coercive. The pricing interchange notice requested that PGI provide a basis for the estimate of its direct labor rates and revise its pricing sheet. AR, Tab 7, Pricing Interchange Notice and PGI Response at 7. At no point did the agency direct PGI to increase its direct labor rates. The agency instead left it to PGI's independent business judgment to decide how it wanted to "revise" its proposal. This protest ground is denied.

Challenge to the Terms of the Solicitation

In its supplemental protest, PGI argues that the agency report revealed a latent ambiguity in the adjectival ratings. Comments and Supp. Protest at 21. Specifically, PGI argues that the agency's interpretation of the FOPR, as laid out in the FODD, "disconnect[ed] the link between the [a]gency's evaluation of an offeror's approach and the [a]gency's assignment of strengths to a proposal." *Id.* This distinction, PGI argues, indicates that the agency has not defined the criteria for an "approach" in a rational or consistent way. *Id.* at 22. The agency responds that this protest ground is untimely because PGI knew of all the necessary facts for this protest ground prior to the filing of the agency report. Supp. COS/MOL at 9-10.

We agree that this supplemental protest ground is untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. To be considered timely, a protest must be filed within ten calendar days of when the protester knew, or should have known, its basis for protest. 4 C.F.R. § 21.2(a)(3).

PGI bases its supplemental protest ground on information it learned from the FODD. See Comments and Supp. Protest at 22 (citing pages 33-34 of the FODD to demonstrate the purported inconsistent application of the evaluation criteria). PGI, however, had the relevant portions of the FODD prior to filing its initial protest, as demonstrated by PGI's citations to the same pages of the FODD in both its initial and supplemental protests. See Protest at 22; see *also* Comments and Supp. Protest at 22. Accordingly, we dismiss this protest ground because PGI did not file it within ten calendar days of when it knew, or should have known, the basis for protest.

Challenge to the Best-Value Tradeoff Decision

In its final challenge, PGI argues that the agency's best value tradeoff decision was unreasonable due to the purported errors discussed above. Protest at 28. We deny this protest ground.

As an initial matter, we note that source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Integrity Management Consulting, Inc.*, B-418776.5, June 22, 2021, 2021 CPD ¶ 245 at 10. In reviewing an agency's source selection decision, we examine the record to determine if it was reasonable and consistent with the evaluation criteria and applicable procurement statutes and regulations. *Id.*

PGI's challenge to the best value tradeoff decision is based on its earlier protest grounds that we have denied. Accordingly, we deny this challenge as it presupposes unproven agency errors and thus, does not establish an independent basis of protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel