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# Decision

**Matter of:** Tec-Masters, Inc.

**File:** B-416235

**Date:** July 12, 2018

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## DIGEST

1. Protest is denied where agency did not apply unstated evaluation criteria in determining whether past performance information was highly relevant in terms of size, scope, or complexity to the instant procurement.
2. Protest is dismissed as abandoned where protester failed to rebut agency's position that the awardee's past performance evaluation was reasonable.
3. Protest is denied where agency conducted price realism analysis consistent with the terms of the solicitation.

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## DECISION

Tec-Masters, Inc., of Huntsville, Alabama, protests the award of a contract to L&M Technologies, Inc. (L&M), of Albuquerque, New Mexico, under request for quotations (RFQ) No. 80MSFC18R0023, issued by the National Aeronautics and Space Administration (NASA) for logistics support services. The protester alleges that the agency applied an undisclosed evaluation scheme and miscalculated quotations.

We deny the protest.

## BACKGROUND

NASA issued the RFQ on November 9, 2017, as a small business set-aside, for logistics support services to be provided at the George C. Marshall Space Flight Center in Huntsville, Alabama. Agency Report (AR), Tab 1, RFQ at BATES 8, 172. The RFQ contemplated the issuance of a blanket purchase agreement with two associated fixed-price task orders to be performed over a 1-year base period, four 1-year option periods, and a 6-month extension period. Id. at BATES 171-180, 343-350, 376-383. Specific logistics services contemplated included equipment management services, motor pool and transportation services, flight hardware support operations services, shipping and receiving services, mail services, moves and furniture services, property disposal, and material, property and warehouse management services. Id. at BATES 172-180. Quotations were to be evaluated on a best-value tradeoff basis using two equally important factors, price and past performance. Id. at BATES 165-166.

NASA received quotations from four vendors, including Tec-Masters and L&M. The results of the evaluation conducted by the source evaluation team (SET) were:

	<b>Total Quoted Price</b>	<b>Confidence Rating</b>
<b>Tec-Masters</b>	\$39,673,950	Moderate
<b>L&amp;M</b>	\$35,429,839	High

AR, Tab 22, Marshall Logistics Support Services (MLSS) Final Findings Presentation, at BATES 1757. The source selection authority (SSA) reviewed the SET's results and determined that, despite the differences between the firms' confidence ratings, both had strong past performance records and neither had an advantage under the past performance factor. AR, Tab 23, Source Selection Statement at BATES 1764. As a result, the SSA distinguished these quotations on the basis of price and determined that L&M's quotation was the better value because it quoted a lower price. Id. at BATES 1765-1766. After receiving its debriefing, Tec-Masters filed the instant protest.

## DISCUSSION

Tec-Masters raises multiple challenges to the agency's conduct of the acquisition. The firm first alleges that the agency applied an unstated evaluation scheme when evaluating quotations under the past performance factor. Tec-Masters also alleges that NASA improperly evaluated its past performance under the evaluation scheme. Finally, the protester alleges that L&M's price was unreasonably low. We have considered all of the firm's allegations and find no basis to sustain the protest.

## Unstated Evaluation Criteria

Tec-Masters argues that NASA applied undisclosed evaluation criteria in evaluating the relevance of referenced contracts under the past performance factor. The firm complains that NASA should have disclosed that referenced contracts needed a “highly relevant” rating in size, scope, and complexity for at least one referenced contract in order to receive the highest overall confidence rating, but did not disclose the criteria for receiving such a rating. Protester’s Supp. Comments at 6. The firm asserts that the agency mechanically applied quantitative standards to determine whether referenced contracts merited a “highly relevant” rating in terms of size, scope, or complexity. Id. at 3-6. The agency counters that the evaluation scheme was logically encompassed within the terms of the solicitation. Supp. Memorandum of Law (MOL) at 2.

The RFQ advised vendors to submit up to six referenced contracts performed by either the vendor or a proposed subcontractor. AR, Tab 1, RFQ at BATES 94. The solicitation further advised vendors to provide specific details explaining how the past performance references were relevant in terms of size, scope, and complexity to the instant acquisition. Id. at BATES 97. To this end, the RFQ provided specific criteria for establishing minimal relevance under those three categories. Id.

For size, past performance references would be considered relevant, if the referenced contract was performed by the vendor and the contract value was equal to or greater than \$2 million or if the referenced contract was performed by a subcontractor and the contract value was equal to or greater than \$500,000. Id. For scope, relevance would be determined based on whether the referenced contract demonstrated relevant experience in six scope areas. Id. A referenced contract performed by the vendor would be evaluated as relevant when it demonstrated experience in at least two of the scope areas, while a referenced contract performed by a subcontractor would be evaluated as relevant when it demonstrated experience in the same scope area that the subcontractor was proposed to perform. Id. For complexity, relevance would be determined based on the number of annual actions performed in each scope area. Id. For example, for a vendor’s referenced contracts, it must have completed a minimum of 400 annual actions in the equipment services scope area to be determined relevant. Id.

The SET evaluated referenced contracts which exceeded the specified levels for establishing relevance as “highly relevant” in accordance with an internal source selection evaluation plan. AR, Tab 21, SET Evaluation Guidelines at BATES 1596-1601. The record shows that NASA established criteria for determining whether a referenced contract merited a “highly relevant” rating in terms of size, scope, or complexity. Id. For example, a referenced contract performed by a vendor which had a value greater than \$4 million would be considered “highly relevant.” Id. at 1596. The record also shows that a referenced contract would be deemed a significant strength when it received three “highly relevant” ratings in size, scope, and complexity, and the referenced contract had very good to exceptional performance history. Id. at 1602. Finally, the solicitation provided that a vendor’s overall confidence rating was a function of the number of significant strengths, strengths, weaknesses, or significant

weaknesses received. AR, Tab 1, RFQ at 169. These are the criteria that the protester alleges should have been included in the solicitation.

When reviewing whether an agency applied unstated evaluation criteria, our decisions explain that an agency is required to evaluate quotations based solely on the factors identified in the solicitation. IBM Global Business Serv.--U.S. Federal, B-409029, B-409029.2, Jan. 27, 2014, 2014 CPD ¶ 43 at 4. While an agency may apply evaluation considerations that are not expressly outlined in the solicitation if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. Id.

On this record, we find that NASA's internal criteria<sup>1</sup> were reasonably and logically encompassed within the stated evaluation criteria.<sup>2</sup> Here, as noted above, the solicitation plainly advised vendors that the agency would make a relevance assessment by comparing similarities between a referenced contract and the instant acquisition in terms of size, scope, and similarity. Furthermore, the RFQ repeatedly instructed vendors that a referenced contract would be considered relevant if the past performance satisfied minimum criteria. By citing minimum criteria, the solicitation implied that vendors with past performance exceeding the minimum levels may obtain a higher relevance rating. Cf. MetalCraft Marine, Inc., B-410199, B-410199.2, Nov. 13, 2014, 2014 CPD ¶ 338 at 8 (although solicitation did not specifically state that technical proposals would be evaluated for a particular characteristic, the evaluation was implied by other factors contained in the solicitation).

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<sup>1</sup> The ratings definitions in the source selection plan are internal agency instructions, not disclosed to offerors in the solicitation, and do not give outside parties any rights. DTH Mgmt. JV, B-283239, Oct. 6, 1999, 99-2 CPD ¶ 68 at 4; see also Mandex, Inc.; Tero Tek Intl., Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244 at 7 ("Alleged deficiencies in the application of an agency evaluation plan or source selection plan do not alone provide a basis for questioning the validity of the award selection. These plans are internal agency instructions and as such do not give outside parties any rights.").

<sup>2</sup> To the extent Tec-Masters asserts that its protest is controlled by one of our decisions, we do not find the comparison persuasive. See Native Resource Development Co., B-409617.3, July 21, 2014, 2014 CPD ¶ 217. In Native Resource Development Co., the agency assigned a weakness to the protester's proposal because its proposal included a lower staffing level than the government estimate. Id. at 5. Our Office sustained the protest because the agency never looked beyond the staffing level to determine whether the protester's technical approach actually warranted the lower rating and the solicitation did not inform offerors that technical proposals with staffing levels below the government estimate would receive a weakness. Id. This protest is distinguishable based on the nature of the challenges. Whereas in Native Resources Development Co. the staffing level did not demonstrate the quality of the technical approach, the record here shows that the dollar value of a past performance reference, number of similar duties, and quantity of similar activities demonstrated whether a performed contract was relevant to the instant acquisition.

More significantly, the solicitation's evaluation section provided definitions for the overall confidence ratings, which advised vendors that a quotation would receive a higher overall confidence rating based, in part, on the degree of relevance between the past performance and the instant acquisition. AR, Tab 1, RFQ at 169. For instance, the solicitation provided that a vendor would receive a "very high level of confidence" rating when its past performance was of exceptional merit and was very highly pertinent (*i.e.*, relevant) to the acquisition. *Id.* Similarly, a vendor would receive only a "moderate level of confidence" rating when its past performance demonstrated effective performance and was merely pertinent to the acquisition. *Id.* Thus, these definitions plainly advised vendors that the agency would distinguish referenced contracts based on the degree of relevance to the instant acquisition, and that the agency's overall past performance rating would be based in part on that relevancy determination.

In any event, we consider it axiomatic in a competitive procurement that the agency would identify some reference points in order to determine the degree of relevance between referenced contracts and the instant acquisition, particularly where the solicitation advised that referenced contracts would be evaluated for relevancy and not on a pass or fail basis. Accordingly, we find that the criteria set forth in the agency's internal source selection plan was reasonably and logically encompassed by the stated evaluation criteria. *Cf. A-P-T Research, Inc.*, B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 7 (although solicitation did not state that a performance reference would be deemed not relevant when the agency evaluated the reference as not relevant in terms of size, scope, or complexity, that evaluation scheme was logically encompassed within the solicitation because the solicitation required vendors to demonstrate that any provided references were comparable to the procurement).

#### Past Performance Evaluation

In its protest, Tec-Masters alleged that its past performance information was evaluated unequally. Specifically, the firm asserted that NASA evaluated one of its proposed subcontractor's referenced contracts less favorably than it did for another vendor using the same subcontractor. Protest at 6-7. Tec-Masters further asserted that it was assigned strengths for referenced contracts with exceptional past performance, while L&M was assigned significant strengths for contracts with only very good past performance. *Id.* at 7.

In response, the agency explained how each of Tec-Master's past performance references were evaluated and why. MOL at 14. The agency further stated that the firm's proposed subcontractor references did not receive "highly relevant" overall ratings because they were not "highly relevant" in terms of complexity. *Id.* In addition, NASA explained that L&M received a significant strength for one of its referenced contracts because that referenced contract was "highly relevant" in terms of size, scope, and complexity, whereas Tec-Master did not have a similarly rated referenced contract. *Id.* Finally, the agency explained that Tec-Master and another vendor proposed to use the same subcontractor for slightly different purposes, which accounted for the fact that

Tec-Master received a lower rating than the other vendor for the same referenced contract. Id. at 14-15.

Tec-Master's comments responded generally to the agency's explanations regarding its past performance ratings. Protester's Comments at 23-24. For instance, the firm merely reasserted that its referenced contracts received lower ratings, even though other vendors received higher ratings when including the same contracts in their quotations. Id. at 23. Additionally, the protester generally stated that had it been aware of the evaluation criteria, it would have crafted a better quotation. Id. at 24. Finally, Tec-Master admitted that the variance in ratings resulted from a difference in the narrative descriptions contained in the quotations. Id.

In our view, Tec-Master has abandoned its allegation that NASA evaluated its quotation unequally. Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to rebut or respond to the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable, and as a result, the protester abandons the assertion. IntegriGuard, LLC d/b/a HMS Federal--Protest and Recon., B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5; Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338 at 2. We find that the protester abandoned its allegation because NASA provided a detailed explanation substantiating the evaluation of the firm's past performance and the firm did not respond with any specific argument showing that NASA's position was unreasonable. Cf. Medical Staffing Solutions USA, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 2-3 (protester abandoned allegations when it failed to show the agency's explanation was unreasonable). Accordingly, we dismiss this protest allegation as abandoned.<sup>3</sup>

## Price Evaluation

In its protest, Tec-Master alleged that NASA should have rejected L&M's quotation for containing an unreasonably low price. Protest at 8. In its comments, the firm argued that L&M's price was "unusually low" and "unrealistic" because its price was 20 percent lower than the government estimate for the critical labor categories and did not contain the minimum number of employees as required by the solicitation. Protester's Comments at 24. NASA counters that it conducted a reasonable price realism analysis because it verified L&M's pricing data. MOL at 20.

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<sup>3</sup> Tec-Master's protest also stated, "[i]f the awardee had any weaknesses scored against it in the evaluation," then it should not have received the particular rating assigned. Protest at 7. The firm abandoned any argument in this regard when it failed to respond to NASA's position in its comments. Compare MOL at 18 (explaining that L&M's past performance was not evaluated as having any weaknesses) with Protester's Comments at 23-24 (only arguing that NASA improperly evaluated L&M's quotation because its price was too low).

As our decisions make clear, price reasonableness and price realism are distinct concepts. Tetra Tech, Inc., B-409095, B-409095.2, Jan. 17, 2014, 2014 CPD ¶ 108 at 7. The purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7. Arguments that an agency did not perform an appropriate analysis to determine whether prices are too low, such that there may be a risk of poor performance, concern price realism, not price reasonableness. Id. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Id.

Here, although the protester couched its initial protest allegation in terms of price reasonableness, we view its argument as going to the realism of L&M's pricing. In this regard, the solicitation provided that NASA would evaluate vendors' proposed fully burdened labor rates for realism at the contracting offer's discretion. AR, Tab 1, RFQ at BATES 166. In accordance with that provision, the record shows that the agency verified that L&M's fully burdened labor rates were consistent with the applicable collective bargaining agreement and service contract labor standards labor categories and wage rates. AR, Tab 22, SET Evaluation Report at BATES 1684; Supp. MOL, SET Chairman's Declaration at ¶ 8. The record further shows that NASA verified that L&M's quotation included the requisite number of proposed employees. AR, Tab 22, SET Evaluation Report at BATES 1684; Supp. MOL, SET Chairman's Declaration at ¶ 9. Thus, the record shows that the agency evaluated price consistent with the terms of the solicitation.

To the extent that Tec-Master complains that the agency's price realism analysis was unreasonable because it failed to account for the variance between L&M's quoted price and the government estimate, we note that the agency has wide discretion in selecting the type of price analysis to be performed. TCMP Health Servs., LLC, B-407038, B-407038.2, Oct. 17, 2012, 2012 CPD ¶ 294 at 3. Further, our decisions explain that an agency is not restricted to comparing the government estimate and the quoted price when performing its price realism analysis. Raytheon Tech. Servs. Co., LLC, B-406136, B-406136.2, Feb. 15, 2012, 2012 CPD ¶ 99 at 5-6 (concluding that agency's price realism analysis was reasonable, even though the agency did not conduct a line-by-line comparison between the awardee's proposed compensation and the government estimate). Finally, we note that Tec-Master failed to demonstrate that NASA's price realism analysis was unreasonable because it did not highlight any of L&M's labor rates as unrealistic. Accordingly, the agency demonstrated that it evaluated price consistent with the solicitation, and that L&M's price was identified as realistic under that analysis.

The protest is denied.

Thomas H. Armstrong  
General Counsel