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Decision

Matter of: DynCorp International, LLC

File: B-417506; B-417506.10

Date: July 31, 2019

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DIGEST

Protest challenging agency's evaluation of proposals and alleging that the agency also failed to engage in adequate discussions is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations, and record further demonstrates that the agency's discussions were meaningful and equitable.

DECISION

DynCorp International, Inc., of McLean, Virginia, protests the award of contracts (and the issuance of task orders) in connection with the logistics civil augmentation program (LOGCAP) to Kellogg, Brown & Root Services, Inc. (KBR) of Houston, Texas; Vectrus

Systems Corporation, of Colorado Springs, Colorado; Fluor Intercontinental, Inc., of Greenville, South Carolina, and PAE-Parsons Global Logistics Services (P2GLS), of Arlington, Virginia, by the Department of the Army for support services for U.S. Military installations worldwide. DynCorp argues that the agency misevaluated proposals, failed to engage in adequate discussions, and made unreasonable source selection decisions.

We deny the protest.

BACKGROUND

LOGCAP fulfills the Department of the Army's requirements to provide global logistical support capabilities to Geographical Combatant Commands (GCCs) and Army Service Component Commands (ASCCs) so that military units can focus on and carry out critical missions without having to focus on base operation activities. LOGCAP establishes contracted solutions and capabilities, incorporating an extensive portfolio of services. This includes services such as: "setting the theater"; supply operations; transportation services; engineering services; base camp services; and other logistics and sustainment support services. These services are further broken out into more than 200 work breakdown structure (WBS) references in the Performance Work Statement (PWS), including: minor construction; food services; laundry; morale, welfare and recreation services; billeting; and facility management. See Agency Report (AR), exh. 120-1, Source Selection Plan, at 5.¹

The RFP sought proposals for the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for the Army's fifth generation of LOGCAP, LOGCAP V. The RFP contemplates the award of between four and six IDIQ contracts, with each contract having an initial 5-year ordering period and five, 1-year optional ordering periods. RFP at 2.² Task orders can be awarded using fixed-price, cost-reimbursable, or labor-hour type contract line item numbers (CLINs). Id. at 3. The cumulative maximum anticipated dollar amount for all IDIQ contracts is \$82 billion. Id.

In addition to the award of the IDIQ contracts, the RFP also contemplates the award of the first seven task orders in support of U.S. military operations as follows: Northern Command (NORTHCOM); Southern Command (SOUTHCOM); European Command (EUCOM); African Command (AFRICOM); U.S. Central Command (CENTCOM); Pacific

¹ There were several protests filed in connection with the agency's actions in awarding these contracts and issuing the task orders. All of the agency reports in each protest were organized using the same exhibit numbering system so that all citations in every protest were to the same set of documents. Not all documents were produced in every protest.

² All references to the RFP are to the version produced by the Army that is conformed through RFP amendment No. 11. AR, exh. 3.

Command (PACOM); and Afghanistan. RFP at 115-116.³ Each task order award, with the exception of Afghanistan, consists of two primary components. The first component of each of the awarded task orders, “setting the theater,” is to be performed on a fixed-price basis.⁴ The amount of the task order for the “setting the theater” component during the base year of performance represents the minimum guaranteed amount for each of the IDIQ contracts. RFP at 3. The second, larger, component of the awarded task orders is for requirements to be performed on a cost-reimbursement basis. The RFP contemplates including in the initial task orders performance requirements for a 1-year base, and four 1-year option periods. Id.

Offerors were required to submit a single proposal encompassing all six GCCs/ASCCs and Afghanistan. RFP at 101. Award of the IDIQ contracts and the corresponding seven initial task orders was to be made on a best-value tradeoff basis, considering the following four factors, which are listed in descending order of importance: (1) technical/management; (2) past performance; (3) small business participation; and (4) cost/price.⁵ Id. at 114-116. The technical/management factor was further divided into two subfactors: (1) regional capabilities in support of setting and surging the theater and initial service support for Army deployment; and (2) management approach, key initiatives, and labor staffing model. Id. at 117. The non-price factors, when combined, were significantly more important than price. Id. at 115.

In response to the RFP, the agency received six proposals, all of which were included in the competitive range. The agency engaged in extensive discussions with the offerors, soliciting several interim rounds of proposals, and ultimately soliciting and receiving final

³ The regions were divided into 3 operational groups. Operational group 1 included EUCOM and PACOM; an offeror was eligible to receive only one task order award in operational group 1. RFP at 116. Operational group 2 included CENTCOM, NORTHCOM, AFRICOM, and SOUTHCOM; an offeror was eligible to receive only one task order award in operational group 2. Id. Operational group 3 included only Afghanistan; all offerors that were selected for an operational group 1 or 2 award, with the exception of the CENTCOM awardee, were eligible for award of the Afghanistan task order. Id.

⁴ The Afghanistan task order does not include a “setting the theater” component.

⁵ The RFP advised that for the technical/management and small business participation factors, the agency would assign adjectival ratings of outstanding, good, acceptable, marginal or unacceptable. RFP at 118, 120. For the past performance factor, the agency would assign ratings of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 119.

For purposes of evaluating cost/price, the RFP advised that the agency would evaluate the cost reimbursement elements for reasonableness and realism, and the fixed-price elements of the offerors’ proposed price for reasonableness; the RFP also advised that proposed cost/price would be evaluated for balance. RFP at 120-121.

proposal revisions (FPRs) from each offeror. The agency evaluated the FPRs and awarded four IDIQ contracts--to Fluor, KBR, Vectrus and P2GLS--and issued the seven initial task orders to one or another of the awardees. The agency's evaluation results and award decision in each of the GCCs and Afghanistan was as follows (the recipient of each task order is shaded in the tables below):

EUCOM

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Good	Substantial	Outstanding	\$417,999,413
KBR	Outstanding	Substantial	Outstanding	\$183,304,831
Fluor	Outstanding	Satisfactory	Good	\$180,491,766
P2GLS	Good	Substantial	Outstanding	\$162,390,361
URS	Good	Satisfactory	Acceptable	\$287,441,533
Vectrus	Outstanding	Substantial	Good	\$147,453,303

PACOM

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Good	Substantial	Outstanding	\$597,240,524
KBR	Outstanding	Substantial	Outstanding	\$383,055,076
Fluor	Outstanding	Satisfactory	Good	\$317,034,989
P2GLS	Good	Substantial	Outstanding	\$304,425,024
URS	Good	Satisfactory	Acceptable	\$537,372,565
Vectrus	Outstanding	Substantial	Good	\$349,187,574

CENTCOM

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Good	Substantial	Outstanding	\$2,053,603,781
KBR	Outstanding	Substantial	Outstanding	\$1,866,642,855
Fluor	Outstanding	Satisfactory	Good	\$1,385,197,224
P2GLS	Good	Substantial	Outstanding	\$1,463,639,678
URS	Good	Satisfactory	Acceptable	\$1,530,466,786
Vectrus	Outstanding	Substantial	Good	\$1,033,582,366

NORTHCOM

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Good	Substantial	Outstanding	\$575,683,741
KBR	Outstanding	Substantial	Outstanding	\$393,988,697
Fluor	Outstanding	Satisfactory	Good	\$426,033,361
P2GLS	Good	Substantial	Outstanding	\$472,838,710
URS	Good	Satisfactory	Acceptable	\$374,137,985
Vectrus	Outstanding	Substantial	Good	\$423,823,325

AFRICOM

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Good	Substantial	Outstanding	\$179,957,087
KBR	Outstanding	Substantial	Outstanding	\$154,273,093
Fluor	Outstanding	Satisfactory	Good	\$137,222,537
P2GLS	Good	Substantial	Outstanding	\$126,507,558
URS	Good	Satisfactory	Acceptable	\$242,525,796
Vectrus	Outstanding	Substantial	Good	\$117,736,326

SOUTHCOM

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Good	Substantial	Outstanding	\$60,883,169
KBR	Outstanding	Substantial	Outstanding	\$56,925,859
Fluor	Outstanding	Satisfactory	Good	\$53,422,722
P2GLS	Good	Substantial	Outstanding	\$34,596,500
URS	Good	Satisfactory	Acceptable	\$87,733,751
Vectrus	Outstanding	Substantial	Good	\$32,703,734

AFGHANISTAN

Offeror	Technical/ Management	Past Performance	Small Business	Total Evaluated Price
DynCorp	Acceptable	Substantial	Outstanding	\$1,424,025,013
KBR	Good	Substantial	Outstanding	\$1,372,043,984
Fluor	Good	Satisfactory	Good	\$1,235,346,545
P2GLS	Acceptable	Substantial	Outstanding	\$1,276,889,223
URS	Acceptable	Satisfactory	Acceptable	\$972,798,555
Vectrus	Good	Substantial	Good	\$1,338,863,477

AR, exh. 123, Source Selection Decision Document (SSDD), at 7, 12, 15, 18, 19, 22, 23. After being advised of the agency's source selection decisions and requesting and receiving a debriefing, DynCorp filed the instant protest.

PROTEST

In its initial protest, DynCorp raised a number of challenges to the agency's evaluation of its proposal; challenges to the agency's evaluation of the other proposals; and challenges relating to the adequacy of discussions. After receiving the agency report and filing a supplemental protest raising additional allegations, DynCorp filed comments in which it withdrew all of its challenges to the evaluation of its own proposal, with one exception that we discuss below.⁶ DynCorp's comments focused principally on the adequacy of the discussions that it was afforded; the agency's evaluation of the other offerors' proposals in certain discrete areas; and, derivatively, the reasonableness of the agency's source selection decisions. We have reviewed all of DynCorp's allegations and find no merit to any of them. We discuss DynCorp's principal allegations below.

The Labor Staffing Model

As noted above, offerors were required to include in their proposal a labor staffing model (LSM). Each offeror's LSM essentially is a mechanism designed to predict and track the cost associated with performance of the solicited requirements, assuming certain broad, performance-based parameters and assumptions. The broad performance-based parameters and assumptions were identified in the RFP's performance work statement, and included, for example, the operation of a fuel depot of a particular size and configuration, in a particular location, during certain specified hours of operation, and so on. All of the performance-based parameters and assumptions for the LSM were constant for all offerors, which is to say, all offerors prepared their proposals using the same set of inputs.

The record shows that, after receiving proposals, the agency engaged in extensive discussions with the offerors concerning their proposed LSMs. At the conclusion of the discussions, the agency found the DynCorp LSM to be technically acceptable, but identified some limitations. Specifically, the evaluators found that DynCorp's LSM used what they described as a simplistic estimating methodology that assigned labor categories and hours or task duration to each identified task, and used a predominantly universal calculation methodology to determine the resulting labor required to perform any given task. The evaluators found that, although DynCorp's LSM was consistent, scalable and adjustable across the broad range of RFP requirements, there were no

⁶ In its consolidated comments DynCorp also argued that the agency's evaluation of KBR's past performance was unreasonable. In response to that filing, KBR and the agency argued that this aspect of DynCorp's protest was untimely and requested that it be dismissed. In responding to these dismissal requests, DynCorp withdrew its challenge to the evaluation of KBR's past performance.

identified strengths, weaknesses, significant weaknesses or deficiencies associated with its approach. AR, exh. 96-1 DynCorp Final Technical Evaluation Report, at 29-30. The evaluators also found that the staffing model supporting rationale and source documentation submitted by DynCorp with its proposal provided only broad or generic descriptions in support of the hours or task durations assigned to perform RFP requirements. Id. at 30.

DynCorp argues that the agency failed to provide it with meaningful discussions in connection with its LSM, and also treated it unequally during discussions in comparison with the other offerors in relation to the quality of the discussions offered to them. According to DynCorp, the agency never advised it of the conclusions described above relating to the limitations of its LSM, whereas, the agency provided other offerors more in-depth information about the agency's evaluation findings relative to their LSMs.

We find no merit to this aspect of DynCorp's protest. When an agency engages in discussions, those discussions must be meaningful, equitable, and not misleading. EMW, Inc.; Pragmatics, Inc.; et al., B-409686.4 et al., July 21, 2014, 2014 CPD ¶ 220 at 8. Where the manner in which the agency communicates with an offeror during discussions misleads the offeror into responding in a way that does not address the agency's true concerns, the discussions are inadequate. Id. On the other hand, agencies are not required to engage in all-encompassing discussions, or to "spoon-feed" offerors as to each and every item that could be revised to improve a proposal. CEdge Software Consultants LLC, B-408203, July 19, 2013, 2013 CPD ¶ 177 at 7.

As noted, offerors were required to submit an LSM that predicts the labor staffing mix, types, and quantities necessary to account for all activated service requirements set forth in the RFP. RFP at 107. The RFP provided that the LSM should be consistent, scalable, and adjustable. Id. Offerors also were required to provide a supporting rationale describing the basis for the LSM development for all activated services, including clearly explaining how the offeror determined the types and quantities of labor proposed for a particular resource. Id. The RFP provided that the offerors' explanations should identify the source of the data, formulas or calculations used to estimate the proposed quantities, and should include the basis, support, estimating relationships, or estimating methodologies used by the offeror. Id.

The RFP also included additional guidance concerning the basis of estimate used by the offerors to prepare their respective LSMs. RFP at 107. Of significance, the RFP did not require offerors to use any particular data or "measuring stick" for the development of their LSM basis. Rather, firms were left to use their own business judgment to present an underlying basis or rationale for their LSM, and were free to use any type of information that the offeror thought was useful or predictive of staffing "outcomes" in light of the underlying information used.

The RFP provided examples of the types of information that could be used, including: information derived from "analogous relationships" (such as performance of a particular requirement in a similar setting that the offeror thought was predictive of performing

RFP work requirements); information derived from past experience (such as historical performance, a time study, or standard operating procedures); and information derived from minimum manning standards or regulations applicable to a particular task or area of performance. RFP at 107. However, as noted, the RFP advised offerors that the list was illustrative, and offerors were specifically advised as follows: “The above list is not all inclusive. The Offeror’s description should provide all information appropriate to facilitate the Government’s understanding of the supporting rationale and basis for the Labor Staffing Model.” Id. In effect, therefore, offerors were free to present an LSM based on whatever data or “measuring stick” the offeror thought would best predict the staffing “outcomes” in light of the data inputs from the RFP.

The record shows that, in conducting discussions with all of the offerors, the agency did not ask any questions about the comparative merit of their respective business judgments regarding what formulae, data or other inputs should be used to develop their respective LSMs. Rather, the agency’s discussions focused on inconsistencies, calculation errors or other anomalies that arose in light of the choices made by the offerors.

Thus, for example, in discussing DynCorp’s LSM with the firm, the agency noted that, within its proposed LSM, the source documentation, rationale and approach in certain areas was inconsistent, AR, exh. 150, Discussion Questions for DynCorp, at 3, 4; or that DynCorp had used labor types that were inconsistent with its job descriptions; id. at 5; or that the source documentation was inconsistent either with the requirements of the RFP or DynCorp’s proposed approach or resources, id. at 9, 21; or that its LSM failed to account for the requirements of the RFP, id. at 12, 15, 18; or that the proposal was missing necessary source documentation, id. at 13, 20, 21; or that DynCorp’s LSM was using workload drivers that were duplicative or resulted in inflated resources to be used in performing a requirement, id. at 26; or that DynCorp used a blanket calculation that was inconsistent with its supporting information included in DynCorp’s proposal, id. at 28.⁷

In addition, the record shows that DynCorp also was asked at least one overarching question about its LSM that went to its apparent limitations. DynCorp was asked the following discussion question:

The estimating/calculation methodology used in DynCorp’s labor staffing model and approach predicts staffing for a single element (workload driver or task description) and a single position at a time. This methodology creates potential flaws by not considering interdependent variables in the estimation/calculations found in DynCorp’s labor staffing model and

⁷ See also, AR, exhs. 153-5, 153-6, 154-5 to 154-9, 155-3, 156-6 to 156-9, 156-11, 156-13, 156-15 to 156-17; 157-4, 157-5, and 158-4, DynCorp Technical/Management Discussion Questions.

approach. [This statement was followed by an example and a table concerning custodial services].

* * * *

This methodology is flawed in that the labor staffing model is accounting for the frequency in both the number of chemical latrines (“Annual Frequency” column), as well as, the separate row for frequency of cleanings. This occurs in many instances in DynCorp’s labor staffing model.

* * * *

Similar to the above, in other areas where the hours of operation are included, for example, PWS 05.03, Class III Bulk Operations, which identifies the number of fuel points, gallons dispersed, and the hours of operation; DynCorp’s labor staffing model and approach considers both the hours of operation and the gallons dispersed (see below example). This methodology is again flawed in that it provides staffing based on the hours of operation, as well as, using the gallons per month. [This statement was followed by a table illustrating the concern.]

* * * *

In both instances, this method may significantly inflate the estimated staffing quantities if duplicating tasks performed or associated with other workload drivers. This issue is not unique to the examples provided above and may apply to multiple PWS paragraphs.

AR, exh. 156-18, DynCorp Discussion Question (emphasis supplied). The record therefore shows that the agency advised DynCorp about both particular instances where there was a problem with its LSM, and also advised it more generally about certain limitations inherent in its LSM. While the agency did not specifically advise DynCorp of the evaluation findings challenged by DynCorp relating to its LSM, we find that the agency’s discussions nonetheless were adequate to lead DynCorp into the areas of concern that the agency had with DynCorp’s LSM.

In addition, the record does not support DynCorp’s assertion that other offerors were treated differently than DynCorp during discussions. In every instance of the discussion questions provided to other offerors identified by DynCorp, the questions are similar to (albeit different in terms of subject matter from) the questions provided to DynCorp.⁸ In

⁸ In its supplemental protest, DynCorp provided a list of nine discussion questions that it claims were fundamentally different in terms of the quality and specificity of the questions. DynCorp Supp. Protest, exh. 2.

particular, the discussion questions ask for information that was focused on inconsistencies, calculation errors or other anomalies that arose in light of the choices made by the offerors. However, DynCorp has not identified any instances where the agency asked any other offeror questions about the comparative merit of their respective business judgments regarding what formulae, data or other inputs should be used to develop their respective LSMs.

In the final analysis, the RFP contemplated that the offerors would use their respective business judgments to develop an LSM. Contrary to DynCorp's argument, the record shows that the agency did not advise any particular offeror about the wisdom or comparative merit of the business judgments made in developing their LSMs; the agency confined its discussions to areas where the proposals reflected a lack of documentation or supporting rationale, were inconsistent either with the requirements of the RFP or the particulars of an offeror's LSM, contained calculation errors, or otherwise presented anomalies that required further explanation. On this record, we deny this aspect of DynCorp's protest.⁹

Cost/Price Reasonableness

DynCorp argues that the agency erred in its evaluation of cost/price proposals because it failed to make a determination of cost/price reasonableness in connection with each proposal in each GCC and Afghanistan. According to the protester, the agency was required to make such determinations and the agency's alleged failure to do so renders all of the awards improper.

We find no merit to this aspect of DynCorp's protest. While agencies are required to ensure that award of any contract (or task or delivery order) is at a fair and reasonable cost/price, there is no legal requirement for agencies to make a determination of cost/price reasonableness for every proposal submitted. Rather, agencies are required only to ensure that award is made at a fair and reasonable price. See Federal Acquisition Regulation (FAR) § 15.404-1 ("The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.").

As noted, the RFP provided that the agency would evaluate proposed cost/price for reasonableness, realism and balance. RFP at 120-121. However, the RFP was silent with respect to which proposed cost/price the agency would evaluate for reasonableness, or when it would perform its evaluation. Here, as detailed below, the

⁹ In a related argument, DynCorp suggests that the agency went "beyond" what is minimally required during discussions with other offerors--the identification of deficiencies, significant weakness or weaknesses--such that it was required to conduct more enhanced discussions with DynCorp as well. We have reviewed the record and find no basis for this allegation. Rather, our review confirms that the agency's discussions with all offerors were equitable and meaningful.

record shows that the agency did, in fact, make a determination of cost/price reasonableness as to each of the task orders awarded.¹⁰

The record shows that, at the conclusion of discussions, on February 14, 2019, the agency executed a series of documents entitled Determination of Price Reasonableness, with a separate document for each GCC and Afghanistan. AR, exhs. 117-1 to 117-7. Each of the documents analyzed the evaluated cost/price of the lowest-cost/price proposal in each GCC and Afghanistan, and each reached conclusions with respect to the reasonableness of the lowest-cost/price proposal.

For example in CENTCOM, the lowest-cost/price proposal was submitted by Vectrus. The record shows that the agency found that Vectrus's total evaluated cost/price, its proposed fixed-price elements, and its evaluated cost-reimbursement elements appeared reasonable, based principally on a comparison of the cost/price proposals submitted, and in light of the adequacy of competition for the agency's requirement.¹¹ AR, exh. 117-3, Determination of Price Reasonableness, CENTCOM. Each document also concluded as follows with respect to the remaining proposals:

e. This determination of price reasonableness relied on adequate price competition. Based on the comparison in the table above, the total evaluated price for Vectrus appears fair reasonable for the CENTCOM award determination.

f. While the total evaluated price for Vectrus was determined fair and reasonable for this award determination, the other offerors may be able to be determined fair and reasonable based on a tradeoff with the non-price factors.¹²

AR, exh. 117-3, Determination of Price Reasonableness--CENTCOM, at 4.

¹⁰ Fluor filed a separate protest challenging the agency's issuance of the task order for EUCOM to KBR. Among other allegations, Fluor challenged the underlying substance of the agency's cost/price reasonableness determination in EUCOM. We anticipate addressing Fluor's contention in a separate decision.

¹¹ These memoranda also discuss independent government cost estimates prepared by the agency, but conclude that comparison of the pricing received to those estimates would not provide a valid basis for comparison because of significant changes to the agency's requirements that occurred after the estimates were prepared, as well as differences between the technical approaches proposed, compared to the approach used by the agency to develop the estimates. AR, exhs. 117-1 to 117-7, Determinations of Price Reasonableness.

¹² The quotation here is from the CENTCOM document, but all of the other cost/price reasonableness memoranda include an essentially identical finding.

After executing these documents, the agency made no further findings with respect to the question of reasonableness until the date it executed its SSDD, April 9. On that date, the agency executed the source selection evaluation board (SSEB) report, which summarized the findings of the earlier documents relating to the reasonableness of the lowest-cost/price proposal for each GCC and Afghanistan. AR, exh. 121, SSEB Report, at 142-145. The record includes a second series of documents entitled Fair and Reasonable Price Determination, again with one document for each of the seven awarded task orders. AR, exhs. 197-203. These documents were executed on the same day as the SSEB report and the SSDD, April 9.

Each of these documents reaches a conclusion concerning the reasonableness of the cost/price submitted by the firm selected for award of each task order. For example, in NORTHCOM, the agency found the total evaluated cost/price of KBR, as well as the fixed-price elements and cost-reimbursable elements of its proposal, to be reasonable based on a comparison of KBR's cost/price proposal to the lowest-cost/price proposal submitted for the GCC, and in light of the non-price advantages included in the KBR proposal. AR, exh. 201, Determination of Fair and Reasonable Price--NORTHCOM.¹³

To summarize, the record shows that the agency executed price reasonableness determinations at the conclusion of discussions and found that the firm submitting the lowest-cost/price proposal in each GCC and Afghanistan had submitted a reasonable cost/price, both as to the individual elements of its proposal (fixed-price and cost-reimbursement), as well as to its total evaluated cost/price. The agency then identified the firm to which it intended to make award in each GCC and Afghanistan and, once the firms were identified, made a subsequent cost/price reasonableness determination as to that firm's proposal for the task order in question. Having found those proposals reasonable, the agency then made award of the contracts and issued the task orders.

DynCorp does not take issue with the substance of any of the agency's findings with respect to reasonableness. Rather, DynCorp argues only that the agency was required to perform a reasonableness evaluation of each proposal including its own. However, as noted, we are aware of no legal requirement for agencies to perform a reasonableness evaluation of all proposals received.

Given that the policy underlying the requirement for any sort of reasonableness determination is to ensure that the government pays a fair and reasonable price for goods and services being acquired (and, correspondingly, that it does not pay an unreasonably high price for goods and services), we have no basis to object to the agency's actions here. The agency determined that the cost/price for each of the

¹³ In those instances where the offeror selected for award also had been the lowest-cost/price offeror, the agency simply relied on the reasonableness finding from the earlier set of memoranda described above. Thus, for example, for the CENTCOM award, Vectrus was the lowest-cost/price offeror in that GCC, and also the firm selected for award. AR, exh. 199, Determination of Fair and Reasonable Price--CENTCOM.

issued task orders was reasonable, and thereby discharged its legal obligation to ensure that the awards were made at a fair and reasonable price. We therefore deny this aspect of DynCorp's protest.

In a derivative allegation, DynCorp argues that, because the agency failed to make a finding of cost/price reasonableness with respect to its proposed costs/prices, the agency failed to engage in meaningful discussions with it. According to DynCorp, any analysis of reasonableness on the part of the agency with respect to its proposed costs/prices would have led the agency to find that its proposed costs/prices were unreasonably high, which, in turn, would have required the agency to discuss the matter with DynCorp. DynCorp also points out that the agency reopened discussions to clarify a number of minor remaining concerns with the offerors, and that some offerors received cost-related questions while DynCorp did not. DynCorp therefore also maintains that this last round of discussions was unequal.

We have no basis to object to the agency's actions. Unless an offeror's proposed price is so high as to be unreasonable or unacceptable, an agency is not required to inform an offeror during discussions that its proposed price is high in comparison to a competitor's proposed price, even where price is the determinative factor for award. Centerra Group, LLC, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 6.

As noted above, the agency did not make any cost/price reasonableness determinations until after discussions had closed and all proposal revisions had been submitted. The record does show that the agency reopened discussions with offerors on February 1, 2019, before making any of its cost/price reasonableness determinations because it had some minor concerns with certain proposals.

Specifically, the record shows that the agency had minor concerns about the cost/price proposals of P2GLS, KBR, URS and Vectrus, and also had concerns about KBR's and Fluor's past performance. AR, exh. 212, Briefing for the Source Selection Authority, Jan. 31, 2018, at 3-4. These concerns were discrete matters with a limited potential cost/price impact overall. Id. For example, KBR did not convert from euros to dollars in its EUCOM proposal, which resulted in an understatement of its most probable cost of approximately \$2.6 million. Again by way of example, the agency identified certain qui tam allegations for whistleblower allegations associated with overcharging the government for property that had not previously been discussed with Fluor in connection with its past performance. Id.

Based on these considerations, the agency elected to reopen discussions with all offerors, including DynCorp. However, the agency specifically determined that it would not reopen cost/price discussions with DynCorp. The agency reasoned that DynCorp had been given adequate cost/price discussions during previous iterations of discussions, and had resolved all weaknesses and deficiencies in its cost/price proposal, such that the agency's cost/price evaluators found it acceptable, and did not have any unresolved cost or price issues that required further discussions. AR, exh.

331, Memorandum Concerning Possible Discussions With DynCorp, Dec. 14, 2018, at 1.

The agency also recognized that it could permissively advise DynCorp that its proposed cost/price was high, but since DynCorp's proposed cost/price had not been determined to be unreasonable, there was no obligation on the part of the government to reopen discussions on the subject. AR, exh. 331, Memorandum Concerning Possible Discussions With DynCorp, Dec. 14, 2018, at 2. Ultimately, the agency concluded that it would not reopen cost/price discussions with DynCorp because, although the agency could advise DynCorp that its cost/price was high, it could not advise DynCorp that its cost/price was high in relation to the other costs/prices submitted. Id.

We have no basis to object to the agency's conduct of discussions in this area. As noted, the agency did, in fact, provide DynCorp an opportunity to engage in discussions and requested that it update its past performance information and respond to any newly-identified adverse past performance information to which it had not yet had an opportunity to respond. AR, exh. 248(a) DynCorp Discussion Question. The agency also specifically advised DynCorp that it could revise any portion of its proposal, stating as follows:

Offerors shall submit FPRs [final proposal revisions] no later than 0800 CT [central time] 06 February 2019. Proposal revisions are not limited to those required to respond to ENs [evaluation notices]; however, any changes made to an Offeror's proposal other than those made in response to an EN puts the Offeror's proposal at risk of being unawardable. Offerors must indicate all proposal revisions, regardless of the reason they are undertaken, in accordance with the instructions below.

AR exh. 248, Discussion Letter to DynCorp, Feb. 1, 2019, at 1.

On this record, we have no basis to object to the agency's decision not to engage in further cost/price discussions with DynCorp. The agency did not make any determination--then or subsequently--regarding the reasonableness of DynCorp's proposed cost/price. The agency recognized that DynCorp's cost/price was comparatively high in relation to the other offerors' costs/prices, but rightly concluded that it would be improper for it to advise DynCorp of its relative competitive standing in relation to the other offerors. Finally, the agency determined that it had no outstanding cost/price issues to discuss with DynCorp; that its cost/price proposal, along with its non-price proposal, was acceptable, and that there was nothing to be gained by advising DynCorp that its cost/price was "high" in the absence of information regarding the other offerors' cost/price proposals.

As noted, agencies have no obligation to advise offerors during discussions that their proposed cost or price is high in relation to other offerors, provided the agency has not determined the cost or price to be unreasonably high. Centerra Group, LLC, supra. The fact that the agency here included cost/price-related concerns in its discussions with the other offerors--all of whom had outstanding cost/price issues--does not alter the

agency's obligation to DynCorp during discussions, because the agency had no legal obligation to raise the issue with DynCorp under the circumstances.

In the final analysis, DynCorp essentially is arguing that it submitted an unreasonably high cost/price proposal; that the government erred in failing to determine that its cost/price proposal was unreasonably high; and that the government further erred in not telling DynCorp that its cost/price was unreasonably high. Such reasoning ignores DynCorp's own actions in making the business judgments that led to the cost/price proposal that it submitted, and essentially seeks to place on the government the burden of dissuading DynCorp from its attempt to charge the government what the protester itself characterizes as unreasonably high prices. In light of the discussion above, we have no basis to sustain this aspect of DynCorp's protest.

Remaining Considerations

DynCorp raised a number of additional minor issues that do not provide any basis for our Office to sustain its protest. We discuss these issues briefly below.

Allegedly Noncompliant Proposals

DynCorp argues that the proposals of KBR and P2GLS were noncompliant with certain requirements of the RFP. The protester has identified nine instances where, according to DynCorp, the agency failed to observe that one or the other of these offerors did not meet what it characterizes as a material solicitation requirement. For example, DynCorp argues that KBR proposed too few hours to perform preventive maintenance on night vision goggles, basing its calculations on 1.88 hours rather than the 2 hours specified in the RFP. DynCorp argues that these instances of what it characterized as noncompliance should have resulted in the agency's rejection of KBR's and P2GLS's proposals.

In responding to these contentions, the agency argues that, in some instances, DynCorp is simply incorrect and has misread the proposals, while in other instances, the alleged errors are so de minimus that they could not possibly have prejudiced DynCorp. In any event, the agency argues that these are not material failures to meet the RFP requirements requiring rejection of the proposals, and are instead minor errors in the agency's cost realism evaluation. In the night vision goggle preventive maintenance example noted above, the agency concedes its error, but also notes that the increase in KBR's most probable cost based on the error amounts to only \$6,541.

We have reviewed all of DynCorp's allegations in this area and find no basis to sustain its protest for the reasons advanced. All of the deficiencies alleged by DynCorp pertain to a limited number of instances where DynCorp argues the agency's evaluation failed to make an upward adjustment to one or another firm's proposal. Even if DynCorp were correct, however, these examples of alleged deficiencies would not provide a basis to reject the firms' proposals. Instead, these alleged deficiencies could be rectified by minor upward cost realism adjustments, none of which would have a material effect on

the outcome of the competition. See DynCorp International LLC, B-411465, B-411465,2, Aug. 4, 2015, 2015 CPD ¶ 228 at 13-14. Accordingly, even if DynCorp were correct in all of these allegations, there would be no basis for our Office to conclude that it has been competitively prejudiced by the alleged errors. We therefore deny this aspect of DynCorp's protest.

DynCorp's Technical/Management Rating in Afghanistan

DynCorp argues that the agency erred in assigning its technical/management proposal an adjectival rating of acceptable rather than good for Afghanistan. The protester points out that its technical/management proposal was assigned a rating of good in all of the other GCCs, and that its proposal had all of the same strengths associated with its overarching management approach, which DynCorp maintains should have resulted in its proposal being assigned a rating of good for Afghanistan.

We find no merit to this aspect of DynCorp's protest. In all of the GCCs except Afghanistan, offerors were required to submit a regional capabilities element with their proposal to demonstrate their capabilities in each GCC. In Afghanistan, however, no regional capabilities proposal was required. The record shows that all of the offerors were assigned a number of strengths based on their respective regional capabilities, and that these strengths factored into the adjectival ratings assigned in each GCC. In assigning adjectival ratings in Afghanistan, the agency adjusted all of the offerors' ratings down by one rating due to the absence of any of the regional capabilities strengths. Thus, where an offeror was assigned a rating of outstanding under all of the other GCCs, that rating was reduced to good in Afghanistan, and where an offeror was assigned a rating of good under all of the other GCCs, that rating was reduced to acceptable. See AR, exh. 123, SSDD. The source selection authority explains this in the SSDD:

However, for the AFGHANISTAN decision the criteria for *Regional Capabilities* were not considered part of the evaluation. As described within paragraph 6 of the SSAC's [source selection advisory council's] Comparative Analysis Report, each offeror received five strengths for attributes in its FPRs for *Regional Capabilities*, one each in the areas of: *Existing Internal Locations and Capabilities, Business Arrangements with Host Countries, Strategic Partnerships and Vendor Networks, Supply Chain, and Demonstrations of Rapid responsiveness, capabilities, and experience*. Absent these five strengths, the SSEB assigned an adjectival rating one level lower, corresponding with the rating definitions in the RFP. For example, KBR was assigned five strengths for *Regional Capabilities* and one strength for its *Labor Staffing Model*. Without the additional strengths in *Regional Capabilities* KBR no longer met the definition of Outstanding as its proposal did not contain multiple strengths. The Technical/Management comparison from one offeror to another was not impacted.

Id. at 24 (italics in original). In addition, and in any event, DynCorp was not even in consideration for award in Afghanistan because its proposal was not accepted for award in any other GCC. Id. at 23. Under the circumstances, we conclude that all offerors were treated identically, and that DynCorp was not prejudiced by the agency's assignment of a rating of acceptable under the technical/management factor for Afghanistan. We therefore deny this aspect of DynCorp's protest.

Cost Realism Challenges

Finally, DynCorp raised a number of specific cost realism evaluation arguments in its consolidated comments relating to the agency's evaluation of the labor hours proposed for shelter and billeting, camp logistics support functions, supply support activity operations, and ammunition and munitions operations in NORTHCOM. We conclude that these arguments are untimely.

DynCorp's original protest raised general cost realism challenges to the agency's evaluation and speculated about whether all offerors were required to meet all of the RFP's requirements with respect to both staffing and wage rates in NORTHCOM. None of these original arguments related to the specific challenges identified in DynCorp's consolidated comments. All of the subsequently-raised arguments are based on information provided by the agency in its original agency report filed on May 22. AR, exhs. 17-11, 33-9, and 73-12. Because these allegations were advanced for the first time in DynCorp's consolidated comments that were filed more than 10 days after the information was known to DynCorp, we dismiss these arguments as untimely. 4 C.F.R. § 21.2(a)(2).

The protest is denied.

Thomas H. Armstrong
General Counsel