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Decision

Matter of: AECOM Management Services, Inc.

File: B-418828.4; B-418828.5; B-418828.6

Date: March 17, 2021

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DIGEST

1. Protest alleging that agency held unequal exchanges with offerors in a procurement conducted under Federal Acquisition Regulation part 16 is sustained where the solicitation required the agency to treat offerors fairly but the agency permitted only the awardee to substantially revise its proposal despite conducting exchanges with multiple offerors.
2. Protest asserting that agency unreasonably evaluated awardee's compliance with the solicitation's small business participation requirement is denied where the agency reasonably considered the information included in the awardee's proposal and was not obligated to go beyond the contents of that proposal in evaluating the awardee's compliance with this requirement.
3. Protest alleging that agency applied an unstated evaluation criterion in evaluating protester's technical approach is denied where the weakness assessed by the agency was reasonably related to the solicitation's evaluation criteria.
4. Protest asserting that agency unreasonably evaluated the awardee's failure to price required proposal elements is denied where the agency evaluated the awardee's price proposal reasonably and in accordance with the solicitation's evaluation criteria.

DECISION

AECOM Management Services, Inc., located in Germantown, Maryland, protests the issuance of a task order to Vertex Aerospace, LLC, located in Madison, Mississippi, under fair opportunity submission request (FOSR) N00421-20-TO-0001, issued by the Department of the Navy for contractor logistics support. AECOM asserts that the agency unreasonably evaluated Vertex's proposal under the price and non-price factors, misevaluated AECOM's program execution approach, and conducted unequal and unfair exchanges with Vertex.

We sustain the protest.

BACKGROUND

On December 20, 2019, the agency issued the FOSR under the Navy's Contracted Maintenance, Modification, Aircrew and Related Services (CMMARS) multiple award, indefinite-delivery, indefinite-quantity contract, seeking organizational-, select intermediate-, and limited depot-level maintenance and logistics support services for F-5N/F and F-16A/B (known as the Adversary Program) aircraft. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. The solicitation anticipated the issuance of a task order with fixed-price, cost, and labor-hour line items. Agency Report (AR), Tab 4, FOSR at 1428.¹

The solicitation contemplated the evaluation of proposals using a multiple step approach considering the following evaluation factors: task order administration, contract experience, planned small business participation, program execution, and cost/price. *Id.* at 1449. For the first three evaluation factors, the agency would evaluate each proposal in stages on a pass/fail basis, *i.e.*, first, evaluating task order administration, and, if the proposal received an acceptable rating, proceeding to evaluate the proposal under the next evaluation factor. *Id.* If an offeror's proposal was acceptable under all three factors, the FOSR anticipated the agency evaluating the program execution factor and then conducting a best-value tradeoff considering program execution approach and cost/price. *Id.*

As relevant here, for the planned small business participation factor, the offeror was to complete a planned small business participation document attached to the FOSR and identify, as part of that document, its planned small business participation and its planned small business participants. *Id.* at 1437-1438. The solicitation stated that the agency would evaluate the planned small business participation document to determine if the submission meets the applicable threshold (five percent of the total contract value, inclusive of option periods) and lists one or more small business participants. *Id.* at 01450.

¹ Unless otherwise indicated, the page numbers cited in this decision from the agency report are from the page numbers prepared in response to this protest.

For the program execution factor, the solicitation instructed offerors to provide information regarding their manning and supply approaches, including a narrative for their manpower approach with information on the “[m]etrics used to determine if adjustments to maintenance or logistics manning requirements are necessary to achieve required performance objectives,” among other items. FOSR at 1439. The evaluation criteria stated that, under this evaluation factor, the agency would evaluate each offeror’s ability to meet the requirements of the performance work statement (PWS). To do this, the Navy would evaluate manning (*i.e.*, staffing) and supply chain approaches as well as supporting data including, as relevant here, “[t]he utilization of the planned manpower metrics.” *Id.* at 1450.

For the price factor, the agency committed to evaluate the cost and price line items for reasonableness, realism, and completeness. *Id.* at 1451. The FOSR required proposed unit prices, labor rates, and estimated amounts to correspond with the work required, “to include fully pricing the estimated labor by the FOSR and the [p]rogram [e]xecution requirements of the submission.” *Id.* at 1445. The offeror bore the burden of explaining any inconsistencies between its proposed program execution approach and its price. *Id.*

The solicitation provided the agency might conduct “oral or written interchanges with one or more [o]fferors, in response to any evaluation factor, or any other aspect of the submission.” *Id.* at 1448. The FOSR stated that all offerors would be treated fairly but noted that this did not mean that interchanges would be conducted with all offerors or that all interchanges would be of the same nature or depth. *Id.*

Six offerors, including AECOM and Vertex, submitted proposals in response to the solicitation. During the evaluation, the agency provided a total of five interchanges to three of the offerors, including Vertex and AECOM. COS/MOL at 6.

On May 29, 2020, the agency issued the task order to Vertex. *Id.* at 7. On June 15, two offerors filed protests of the award with our Office, DynCorp International LLC (B-418828.1) and PAE Aviation and Technical Services, LLC (B-418828.2). In response to these protests, the agency took corrective action and reevaluated proposals. *Id.*

Following the reevaluation, the agency rated the proposals of Vertex and AECOM as acceptable under the task order administration, contract experience, and planned small business participation factors. The agency evaluated the two proposals under the remaining two factors as follows:

	Vertex	AECOM
Program Execution	Satisfactory Confidence	Satisfactory Confidence
Price	\$534,872,306	\$535,407,745

AR, Tab 14, Task Order Review Panel (TORP) Brief at 2545. In comparing the two proposals, the source selection authority found that Vertex's proposal was technically superior to AECOM's proposal, since, while both proposals contained one "enhancing feature," the evaluation of AECOM's proposal "disclosed a concern regarding ineffective manpower metrics use." AR, Tab 15, Decision Memorandum at 2585. For the price factor, the source selection authority concluded that AECOM's and Vertex's proposals were "almost equal" with Vertex's proposal being 0.10 percent lower than AECOM's. *Id.* Based on Vertex's superiority under the program execution factor and its slightly lower price, the agency determined that its proposal provided the best value to the Navy. *Id.* at 2586.

On November 13, the Navy announced its decision to affirm the award to Vertex. This protest followed.²

DISCUSSION

The protester contends that the agency conducted unfair interchanges with Vertex that allowed the awardee to revise its proposal to remedy its noncompliance with the solicitation instructions. AECOM argues that this was unfair and unequal because the Navy did not notify AECOM about a confidence decreaser³ in its proposal or provide AECOM with an opportunity to revise its proposal. The protester also challenges the Navy's evaluation of Vertex's proposal under the program execution, small business participation, and price factors, as well as the agency's evaluation of AECOM's program execution approach. Last, AECOM contends that the agency conducted an unreasonable best-value tradeoff determination.⁴

Interchanges with Offerors

The protester argues that the agency conducted interchanges on an unfair basis in violation of the terms of the FOSR. The procurement was conducted under Federal Acquisition Regulation (FAR) section 16.505 with the FOSR specifically noting that:

Because this streamlined evaluation and award is not using the formal source selection procedures of FAR Subpart 15.3, procedures such as a

² Because the value of the task order at issue exceeds \$25 million, the protest is within our Office's jurisdiction to review protests of task orders issued under multiple-award contracts awarded by defense agencies. 10 U.S.C. § 2304c(e)(1)(B).

³ The agency notes that the term "[c]onfidence [d]ecreaser" was used initially but not used during the corrective action reevaluation. COS/MOL at 14 n.3. Since the agency has not suggested alternative terminology, this decision continues to refer to such weaknesses as confidence decreasers.

⁴ While we do not address every argument raised in the protest, we have reviewed each issue and, with the exception of those arguments discussed herein, find no basis to sustain the protest.

competitive range determination, pre-award notifications to [o]fferors excluded from a competitive range, pre-award debriefings, oral or written discussions with all [o]fferors within a competitive range, and requesting final submission revisions from all [o]fferors included within a competitive range are not required.

FOSR at 1448. The FOSR provided the agency with the right to conduct “oral or written interchanges with one or more [o]fferors, in response to any evaluation factor, or any other aspect of the submission.” *Id.* at 1448. Such interchanges would be used “to determine the [o]fferor’s understanding of FOSR requirements, enhance the [g]overnment’s understanding of the submission, fix errors or omissions, as well as obtain other information to facilitate the [g]overnment’s ability to evaluate the submission and obtain better values.” *Id.* The FOSR stated that all offerors would be treated fairly, but noted that this did not mean that interchanges would be conducted with all offerors or that all interchanges would be of the same nature or depth. *Id.*

AECOM argues that the FOSR committed the agency to treating offerors fairly during the interchange process, yet the Navy permitted Vertex to make significant revisions to its proposal but did not permit AECOM the same opportunity. In this respect, the Navy provided Vertex with an interchange notice that flagged Vertex’s failure to fully price its labor hours to include enough hours for a 40-hour week. AR, Tab 7, Vertex Interchange Notice and Response at 02431. The agency noted that this failure meant Vertex’s proposal was noncompliant with the FOSR requirement to fully price estimated labor. *Id.* In addition to providing the interchange notice, the agency conducted a telephone conference with Vertex to further discuss this issue. *Id.* In response to the interchange, Vertex revised its proposal to change portions of its planned small business participation and program execution volumes and to increase its price by approximately \$20 million. See *id.* at 2433; AR, Tab 20, Price Summary Report at 2814.⁵

In contrast, the agency provided AECOM with an interchange notice requesting that it provide “clear documented evidence” to clarify an unclear element in its contract experience volume, relating to the number of aircraft managed simultaneously. AR, Tab 14, TORP Brief at 2574. The protester argues that, unlike Vertex, AECOM was not permitted to submit proposal change pages or revise its proposal in response to the interchange notice. The protester argues that this amounted to unequal interchanges with offerors in violation of the solicitation requirement to treat offerors fairly.

The agency responds that it treated Vertex and AECOM fairly since it provided both offerors with an opportunity to clarify inconsistencies or discrepancies in their proposals, and that, without this opportunity, the agency would have been unable to evaluate either proposal. The agency notes that the FOSR specifically stated that the discussions

⁵ The agency also sent Vertex a second interchange notice asking for an explanation of a discrepancy in its proposal relating to its manning levels. AR, Tab 13, Memorandum on Interchanges at 2532. Vertex provided an explanation for this discrepancy, which the agency accepted. *Id.*

procedures of FAR part 15 did not apply, and that instead the agency would use streamlined procedures under FAR part 16. In addition, the Navy notes that the FOSR expressly told offerors that, while it would treat offerors fairly, this did not mean that interchanges would be conducted with all offerors or that all interchanges would be of the same nature or depth. COS/MOL at 26 (*citing* FOSR at 1448).

Here, we find that the agency did not conduct interchanges fairly. While the FOSR, provided that fair treatment did not require that all interchanges be “of the same nature or depth,” FOSR at 1448, we do not think that the interchanges here may reasonably be characterized as fair treatment. In this respect, Vertex was provided the opportunity to make significant revisions to its proposal, including to its small business utilization and program execution volumes and to its price volume by adding in missing pricing information, resulting in a price increase of approximately \$20 million, whereas AECOM was never advised of a confidence decrier in its program execution approach or provided any opportunity to revise its proposal. This confidence decrier, which was the only weakness found in AECOM’s proposed program execution approach, was one of the primary reasons AECOM’s proposal was not selected for award. See AR, Tab 15, Decision Memorandum at 2585-2586. While this confidence decrier was first assessed during the agency’s corrective action reevaluation, we find that the agency was nonetheless required to raise the concern with AECOM since it had not raised it in its prior interchange. *Cf. Vencore Servs. & Sols., Inc.*, B-412949, B-412949.2, July 18, 2016, 2016 CPD ¶ 346 at 6-9 (sustaining protest, in a FAR part 16 procurement, where the agency failed to reopen discussions despite eliminating a pricing concern based on the agency’s revision of its independent government cost estimate).

In sum, we find that the interchanges were not fair, because Vertex was provided with a significantly greater opportunity to enhance its proposal.

Our prior decisions provide further support for this conclusion. Although the solicitation stated that discussions would not be conducted pursuant to FAR part 15, it also stated that offerors would be treated fairly. See FOSR at 1448. In examining fairness, our Office looks to the standards applicable to negotiated procurements under FAR part 15 as a guide. See *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7.

Under such standards, the exchanges at issue would not be considered fair, because only one offeror was provided with a meaningful opportunity to enhance its proposal. See *Signet Techs., Inc.*, B-417335, B-417335.2, May 28, 2019, 2019 CPD ¶ 202 at 4 (fairness requires that discussions be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award). While the solicitation stated that FAR part 15 discussions would not apply here, we see nothing in the solicitation language, or elsewhere, supporting the agency’s conclusion that engaging in interchanges with at least two offerors, but permitting only one offeror to meaningfully revise its proposal, provides a fair exchange. Accordingly, we sustain this protest ground.

Small Business Participation

The protester challenges the agency's determination that Vertex's proposal complied with the FOSR's small business contracting threshold of five percent of the total contract value. See FOSR at 1450. In this respect, the protester asserts that Vertex's proposed small business participation approach relied on [DELETED]. Supp. Comments and Second Supp. Protest at 32. The protester argues that Vertex relied on the involvement of these two small companies to propose subcontracting [DELETED] percent of the total contract value to small businesses. The protester contends that these two companies are not small business [DELETED], but instead are [DELETED]. *Id.* at 33. The protester further notes that both companies will not be providing personnel directly charged to the [DELETED]. In light of this, the protester contends it was unreasonable for the Navy to credit Vertex's proposal with meeting the five percent small business participation threshold.⁶

In response to this argument, the agency notes that Vertex proposed small business participation goals in accordance with the terms of the FOSR. The Navy then reasonably evaluated this information and concluded that Vertex's proposal met the applicable benchmark for an acceptable rating under this pass/fail evaluation factor. The agency notes that much of AECOM's argument impermissibly relies on information from outside of Vertex's proposal, as well as speculation.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Rather, we will review the record only to determine whether the evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* While agencies are not permitted to use unstated evaluation factors in evaluating quotations, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. *Cobra Tech., Inc.*, B-27241, B-27241.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 3. We will not sustain a protest where the agency's evaluation is reasonable, and the protester's challenges amount to disagreement with the agency's considered technical judgments regarding the specific

⁶ In the alternative, the protester contends that subcontracting the [DELETED] warranted the assignment of a confidence decreaser in Vertex's supply chain approach under the program execution factor. We find that this contention largely relies on information from outside of Vertex's proposal, which the agency was under no obligation to uncover and consider. See *Enterprise Solutions Realized, Inc.; Unissant, Inc.*, B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9. We note further that the FOSR did not provide for an evaluation of past performance or corporate experience, and the protester has not pointed to information from within Vertex's proposal that should have led the agency to conclude that Vertex's subcontracting approach would result in an appreciable performance risk.

elements of a proposal. *BNL, Inc.*, B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 5.

Here, we find that the agency reasonably evaluated the information included in Vertex's small business utilization volume and, based on that information, concluded that Vertex proposed a compliant small business participation approach. While the protester contends that the agency should have questioned Vertex's representations based on information not found in Vertex's proposal, we disagree and find that the agency was not obligated to go beyond Vertex's proposal to scrutinize the veracity of its small business participation representation. In addition, we find that the protester has largely failed to support its contention that payments will not be made to Vertex's subcontractors, or that any payments made will not qualify as payments to small businesses. We note further that Vertex's ultimate compliance with its small business participation goal is a matter of contract administration that our Office will not consider. See 4 C.F.R. § 21.5(a).

Program Execution Approach

The protester challenges multiple aspects of the Navy's evaluation of AECOM's and Vertex's program execution approaches as unreasonable or disparate. We address these in turn.

As an initial matter, AECOM challenges a confidence decreaser found in its proposal for not providing "an approach for the utilization of planned manpower related metrics to adjust the manpower required to meet all elements of the PWS requirements throughout the execution of the contract." AR, Tab 12, Program Execution Summary Report at 2458. The protester argues that the solicitation contained no such requirement. Instead, the protester asserts, the solicitation required offerors to provide the "[m]etrics used to determine if adjustments to maintenance or logistics manning requirements are necessary to achieve required performance objectives." FOSR at 1439. The solicitation also provided, at section 6.4 that the Navy would "evaluate the offerors' ability to meet the requirements of the PWS by evaluating manning and supply chain approaches and supporting data including . . . [t]he utilization of the planned manpower related metrics." *Id.* at 1450. The protester contends, by reading these two provisions together, that the solicitation only required an offeror to disclose the metrics it used to determine whether adjustments to the initial manning requirements identified by the Navy were necessary to meet the requirements of the PWS.⁷ Comments and Supp. Protest at 48. The protester argues that, at a minimum, its interpretation of the solicitation gives rise to a latent ambiguity that the agency is obligated to clarify.

Here, we find the agency's assessment of the confidence decreaser was logically encompassed by the evaluation criteria. In this respect, the agency noted that section

⁷ AECOM contends that it fully met the applicable requirement by providing a detailed program execution narrative statement describing its "[DELETED]." Protest, Ex. I at IV-3.

6.4 of the solicitation required offerors to include supporting data on their “utilization of the planned manpower related metrics” to assist the agency’s evaluation of “offerors’ ability to meet the requirements of the PWS.” FOSR at 1450. This evaluation criterion put offerors on notice that they were to utilize manpower related metrics to meet the requirements of the PWS. The PWS, in turn, stated that “minimum staffing does not guarantee successful contract performance and the contractor shall be prepared to add additional personnel as required to meet performance thresholds.” AR, Tab 4, FOSR PWS at 1532. Given the stated PWS need to add personnel during the life of the contract, we find that the agency reasonably assessed a confidence decrier based on AECOM’s failure to propose the utilization of planned manpower metrics that would be used to assess and adjust the manpower required during the execution of the contract. In our view, this confidence decrier is logically related to the evaluation criterion notifying offerors that the agency would evaluate offerors’ utilization of planned manpower metrics to meet the PWS requirements.

Although the protester contends that its interpretation of the solicitation was also reasonable, and that this gives rise to a latent ambiguity, we do not agree. In this respect, the protester’s interpretation would limit the utilization of manpower metrics to only some of the PWS requirements, *i.e.*, the initial calculation of minimum staffing, but would not address the PWS scenario where additional personnel are needed beyond that minimum level.

The protester further challenges the assessment of this weakness as unequal treatment because Vertex did not receive a confidence decrier even though, in the protester’s view, Vertex’s post-award process, similar to AECOM’s, did not contemplate the continued use of manning metrics throughout contract performance. Comments and Supp. Protest at 51 (*quoting* AR, Tab 8, Vertex Program Execution Proposal at 2434).

When a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10. Here, we agree with the agency that the differing treatment is explained by the different proposal approaches of the two offerors. In this respect, unlike AECOM, Vertex proposed the use of manpower metrics to adjust manning during task order performance. See, *e.g.*, AR, Tab 19, Vertex Program Execution Proposal at 02734-35. For example, Vertex’s proposal includes a section titled “Adjustment to Maintenance or Logistics Manning Requirements,” which listed metrics that would be used, including [DELETED] metrics. *Id.* The Navy reviewed Vertex’s proposed approach to using planned manpower related metrics and concluded that it was consistent with industry standard practices, and provided a reasonable expectation that Vertex could successfully perform this requirement. See AR, Tab 12, Program Execution Summary Report at 2519. While AECOM asserts that this conclusion was unreasonable and that Vertex’s approach was not meaningful, we find that this assertion does not rise beyond disagreement with the agency’s evaluation judgment.

The protester further challenges the Navy's failure to assign AECOM's program execution approach a confidence increaser based on AECOM's exclusive teaming arrangement with [DELETED]. Protest at 5. The protester asserts that this arrangement provides unique benefits to the agency since the supply of F-5 spare parts is dwindling and there is significant risk from diminishing manufacturing sources and material sources (DSMS). AECOM argues that, despite this benefit and the extensive discussion within AECOM's proposal of the advantages offered by this teaming arrangement, there is no mention of this [DELETED] in the agency's contemporaneous evaluation record.

An agency's judgment that the features identified in a proposal did not significantly exceed the requirements of the RFP, and thus did not warrant the assessment of unique strengths, is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4.

Based on our review, we find nothing objectionable about the agency's decision not to assign a strength in light of the discretion afforded it. In this regard, in response to this protest ground, the Navy provided a declaration from the technical evaluation team lead, who explained that the agency considered AECOM's proposed teaming arrangement but ultimately found that it did not appreciably increase the Navy's confidence that AECOM would successfully perform the requirements of the task order. AR, Tab 17, Technical Team Lead Decl. at 2637. In support of this conclusion, the evaluation team lead noted that (1) [DELETED], (2) the F-5 aircraft at issue are unique configurations only flown by the Navy, (3) AECOM's proposal did not identify the configurations of the aircraft, engines and spare parts within [DELETED], and (4) \AECOM's proposal did not indicate whether [DELETED] will result in those parts being readily available or identify a timeline for the availability of the parts. *Id.*

Although the protester challenges this declaration as unsupported by the contemporaneous record, we note that there is no requirement for agencies to document their rationale for not assigning a strength to a particular aspect of a proposal, and in such circumstances we will accept explanations proffered in the protest record, as here. *ENSCO, INC.; PAE National Security Solutions LLC*, B-414844 *et al.*, Oct. 2, 2017, 2017 CPD ¶ 357 at 11. Further, we find the technical lead's explanation to be both reasonable and consistent with the contemporaneous evaluation record, where the Navy noted Vertex's approach of "[DELETED]" but found that it did not appreciably increase the agency's confidence because it was consistent with standard industry practice. AR, Tab 12, Program Execution Summary Report at 02466. In sum, while AECOM believed its supplier provided clear advantages in light of the agency's stated acquisition concerns, the agency reasonably considered the proposed approach but ultimately did not agree. We find no reason to question the agency's judgment.

Price evaluation

The protester challenges Vertex's failure to properly price a defined number of labor hours for certain over and above (O&A) work⁸ on the F-5 (contract line item number (CLIN) 0X05) and F-16 (CLIN 0X13) aircraft. The protester acknowledges that the record shows Vertex priced these hours within these CLINs, resulting in a total amount of [DELETED] for the F-5 aircraft and [DELETED] for the F-16 aircraft. See SAR, Tab 27, Vertex Price Proposal attach. 10 (LH Price Roll-up tab). However, Vertex then [DELETED]. AECOM argues that [DELETED] improperly allowed Vertex [DELETED]. This, in AECOM's view, [DELETED].

The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶148 at 7. Where, as here, a solicitation contemplates the award of a task order with fixed-price portions, an agency may provide for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in a proposal. *Maxim Healthcare Servs., Inc.*, B-412967.9, B-412967.11, June 25, 2018, 2018 CPD ¶ 230 at 8. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 8-9.

Here, we find that the agency reasonably determined that Vertex's proposed O&A hours were compliant with the terms of the FOSR. In this respect, we agree with the agency that nothing in the FOSR required [DELETED]. While offerors were expressly required to include O&A hours in the labor hour CLINs 0X05 and 0X13, the FOSR did not contain a similar statement with respect to [DELETED]. In addition, the solicitation stated that an offeror's minimum manning requirement was to be equal to, or greater than, the agency's "[m]inimum [m]anning [e]stimate ([w]hole heads) for each site, by work center, by labor category." FOSR at 1438. This definition does not prohibit [DELETED].

Although the protester contends that the agency failed to recognize the risks of this approach and should have downgraded Vertex, under either the price or the program execution evaluation factors, we do not agree. In this regard, we note that Vertex explained its approach in its proposal. Specifically, Vertex explained that [DELETED]. AR, Tab 21, Vertex Original Price Proposal Narrative at 2848. The agency, in turn, assessed Vertex's approach based on its proposed composition and rationale of the proposed manpower to include the staffing plan by site, shift, and skill set. The agency also concluded that Vertex's approach was consistent with the manning proposed in the price volume and was fully priced. AR, Tab 12, 02513. We agree with the agency. In

⁸ Examples of such O&A work include "D-level repair actions including In-Service Repairs, aircraft modifications, severe aircraft corrosion treatment, and engine component Reclamation in Lieu of Procurement." AR, Tab 4, FOSR PWS at 1491.

short, we are not persuaded that the approach created the risks AECOM claims; the approach was also compliant with the FOSR requirements.

The protester also challenges the agency's price realism analysis as flawed. In this respect, AECOM argues that Vertex's pricing strategy was inconsistent with the FOSR requirements for offerors to price proposals in accordance with their disclosure statement on file and with their forward pricing rate recommendation (FPRR). The FOSR stated that the offeror and other entities "shall bid in accordance with [their] approved disclosure statements on file." The solicitation also stated that an offeror that did not propose rates in accordance with their FPRR would be ineligible for award. FOSR at 1442, 1451. The protester contends that both of these documents required Vertex [DELETED]. Instead of doing this, however, Vertex proposed to subcontract [DELETED], while not including the [DELETED] on such work. By not [DELETED], the protester contends that Vertex was able to lower its pricing by approximately [DELETED] for the cost-reimbursable CLINs.⁹

Here, we find that the agency reasonably found Vertex's pricing to be compliant with its disclosure statement and its FPRR. In this regard, the agency notes that it credited Vertex's explanation for not including [DELETED], which was its "[DELETED]." Second Supp. MOL at 14 (*quoting* AR, Tab 21, Vertex Original Price Proposal Narrative at 2823). While the protester contends that this was an evasion of the FOSR requirement, we are not persuaded that either the disclosure statement or the FPRR required [DELETED]. We note that Vertex's proposal explained that its disclosure statement required [DELETED], but was silent regarding [DELETED]. AR, Tab 21, Vertex Original Price Proposal Narrative at 2823. In addition, while the FOSR contained requirements for subcontractors to provide supporting cost documentation, the agency explained that Vertex's use of [DELETED]. Second Supp. MOL at 14. We find the agency's explanation to be reasonable.

Prejudice

Finally, we turn to the question of whether AECOM was prejudiced by the Navy's unfair interchanges with Vertex and AECOM. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis

⁹ AECOM further argues that the agency's price realism analysis failed to consider whether or how these [DELETED] costs were included in Vertex's proposal, which did not explain or provide the supporting documentation for these costs. The protester asserts that the awardee's failure to include [DELETED] caused Vertex's pricing to be understated, and will result in overstated pricing in other areas of the task order. The protester, however, has not identified specific CLINS that it contends are overstated. Moreover, to the extent this argument is asserting that the costs associated with Vertex's [DELETED] will result in impermissible contract costs, we find that this largely raises a matter of contract administration that is outside our Office's consideration.

for finding prejudice, and our Office will not sustain the protest. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. In addition, we resolve any doubts concerning the prejudicial effect of an agency's actions in favor of the protester. *Delfasco, LLC*, B-409514.3, March 2, 2015, 2016 CPD ¶ 192 at 7.

Here, we find that had the Navy fairly conducted its interchanges with Vertex and AECOM, AECOM would have had an opportunity to revise its proposal to address its only confidence decrier. This, in turn, could have led to AECOM's proposal being evaluated as equal or superior to Vertex's proposal under the program execution factor, while still remaining "almost equal" in price. AR, Tab 15, Decision Memorandum at 2585. Under these circumstances, we conclude that AECOM has demonstrated a reasonable possibility of competitive prejudice.

RECOMMENDATION

We recommend that the Navy reopen interchanges with AECOM and advise AECOM of the confidence decrier the agency assessed in the firm's program execution approach, which was one of the primary reasons its proposal was not selected for award. We also recommend that the Navy provide AECOM an opportunity to revise its proposal. We further recommend that the Navy then perform a new evaluation consistent with the terms of the FOSR and make a new selection decision. In the event that the proposal submitted by Vertex no longer represents the best value, its task order award should be terminated for the convenience of the government and a new task order should be issued consistent with the new evaluation.

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

The protest is sustained.

Thomas H. Armstrong
General Counsel