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Decision

Matter of: The Mission Essential Group, LLC

File: B-421745.4

Date: April 2, 2025

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DIGEST

Protest challenging the scope of agency corrective action taken in response to the protester's prior protest is denied where the agency reasonably limited the scope of discussions to address only the issues that led the agency to take corrective action.

DECISION

The Mission Essential Group, LLC, of New Albany, Ohio, protests the scope of the agency's corrective action following its prior protest of the award of a contract to Worldwide Language Resources, LLC (WWLR), of Fayetteville, North Carolina, under request for proposals (RFP) No. H92402-23-R-0002, issued by the United States Special Operations Command for linguist support services. The protester alleges that the agency's proposed corrective action is both unreasonable and unfairly benefits WWLR.

We deny the protest.

BACKGROUND

The RFP was initially issued on April 3, 2023, and contemplated the award of a single indefinite-delivery, indefinite-quantity contract with a 5-year ordering period. Contracting Officer's Statement (COS) at 2. The solicitation included a preliminary factor--general administrative and qualifying criteria--to be evaluated on a pass/fail basis. Agency Report (AR), Tab 7, RFP at 198. Proposals that failed the initial factor were not

evaluated further. *Id.* The solicitation then contemplated a best-value tradeoff among four additional factors: (1) transition plan; (2) management plan; (3) past performance; and (4) price. *Id.*

Five proposals were received by the original proposal due date in May of 2023. COS at 3. Four of those proposals received a pass rating for the preliminary factor, but ultimately only three proposals were selected for inclusion in the competitive range: Mission Essential, WWLR, and SOS International LLC (SOSi).¹ *Id.* at 4. The agency then issued evaluation notices (ENs) to all three remaining offerors and solicited final proposal revisions on February 9, 2024. *Id.* On May 10, the agency concluded that WWLR's proposal represented the best value to the government and made award to WWLR. *Id.* Following a debriefing, Mission Essential filed a protest with our Office challenging the award to WWLR on several grounds, and subsequently filed a supplemental protest that included an allegation that WWLR's management plan should have been assessed a deficiency because its small business subcontracting plan did not meet the minimum requirements of the solicitation. *Id.* at 5. The agency elected to take corrective action committing to reevaluate proposals and take other corrective action as appropriate, and we dismissed the protest as academic. AR, Tab 25, Notice of Corrective Action; *The Mission Essential Group, LLC*, B-421745.2, B-421745.3, Aug. 19, 2024 (unpublished decision).

Subsequently, the agency reevaluated proposals and issued a new set of ENs to each of the three offerors. COS at 6-7. However, the agency limited the scope of proposal revisions to the scope of the issues identified in the ENs as well as any other portions of the proposal materially impacted by revisions necessary to address the ENs. *See, e.g.*, AR, Tab 32, Request for Final Proposal Revisions to Mission Essential at 1. This protest followed.

DISCUSSION

The protester raises two primary challenges to the scope of the agency's corrective action. Protest at 30-37. First, the protester alleges that the agency has improperly limited proposal revisions in a way that is impermissible, unequal, and unfair, primarily because the agency has limited offerors to revising only those portions of their proposals identified in the ENs and the ENs differ between offerors, thus allowing offerors unique opportunities to revise their respective proposals. *Id.* Second, the protester contends that the agency's discussions with the protester were not meaningful

¹ Mission Essential was initially excluded from the competitive range due to concerns about its disclosure of certain changes to its corporate structure not at issue in this protest. Mission Essential filed a protest of that exclusion with our Office, and the agency subsequently took voluntary corrective action to include Mission Essential in the competitive range. *The Mission Essential Group, LLC*, B-421745, Sept. 7, 2023 (unpublished decision).

because the agency failed to raise the significant price difference between the protester and other offerors.² *Id.*

Turning to the protester's first argument, the protester objects that the agency has limited proposal revisions to the evaluation notices issued to each offeror. Comments at 5-10. This is unfair, the protester contends, because each offeror's potential revisions are limited differently. *Id.* That is, all offerors will be permitted to revise their price proposals, but each offeror is limited to revising different aspects of their respective price proposals based on the specific issues the agency identified in each evaluation notice. *Id.* Moreover, the protester notes that WWLR, and only WWLR, is being permitted to revise its management proposal, and the protester alleges that the nature of those changes could permit sweeping revisions to WWLR's proposal. *Id.*

Generally, in responding to discussions, offerors may revise any aspect of their proposals as they see fit--including aspects that were not the subject of discussions. *Rel-Tek Sys. & Design, Inc.--Modification of Remedy*, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3. We have concluded, however, that an agency, in conducting discussions to implement corrective action, may reasonably decide to limit the revisions offerors may make to their proposals. *Id.* As a general matter, the details of implementing corrective action are within the sound discretion and judgment of the contracting agency, and we will not object to any particular corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective

² The protester raises additional arguments not addressed in this decision. We have reviewed all of the protester's arguments and conclude that none of them provide a basis on which to sustain the protest. For example, the protester argues that the agency's proposed corrective action violates the Federal Acquisition Regulation's (FAR) requirement that all offerors have a common cutoff for submission of proposal revisions because offerors are being permitted to revise different proposal volumes, effectively creating different cutoff dates for final proposal submission for the revisions to those volumes. Comments at 11-12 (*citing* FAR 15.307(b)). We do not agree.

While the protester identifies a decision in which we concluded that an agency's approach to proposal revisions during corrective action was inappropriate because it failed to create a common cutoff for proposal submission, that case is inapposite. See *Raytheon Tech. Servs. Co., LLC*, B-404655.4 *et al.*, Oct. 11, 2011, 2011 CPD ¶ 236. In *Raytheon*, the agency took corrective action that involved permitting two offerors that were originally excluded from the competitive range to enter the competitive range and submit revised proposals without limitation, but without permitting the original offerors in the competitive range the opportunity to further revise their proposals. *Id.* at 7-8. As a result, different offerors had different periods of time for revising the entirety of their proposals and different cutoff dates for submission, which we concluded violated the FAR's requirement for a common cutoff for final proposal revisions. *Id.* Those are not the facts present here--in this case, all offerors have been permitted to make proposal revisions and given a common cutoff date for submission. Accordingly, we see no basis to sustain the protest on this basis.

action. *MSC Indus. Direct Co., Inc.*, B-411533.2, B-411533.4, Oct. 9, 2015, 2015 CPD ¶ 316 at 5.

Turning first to the price ENs, while the protester is correct that the ENs concerning price proposals differ between the offerors, we do not believe that the protester can establish competitive prejudice with regard to these ENs. Competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. *CSI Aviation, Inc.*, B-415631 *et al.*, Feb. 7, 2018, 2018 CPD ¶ 68 at 7.

In this regard, the agency issued five price ENs, two to Mission Essential, two to WWLR, and one to SOSi. Of note, each of the three offerors received one price EN asking for clarification concerning inconsistencies between their respective price workbook entries and transition plans addressing essentially similar proposal faults. See, AR, Tabs 33, 37, and 41. Because these three price ENs were similar in scope for all three offerors, those ENs cannot represent a source of competitive prejudice.

Accordingly, the only potential avenue for competitive prejudice regarding the price ENs relates to the two remaining price ENs that differed between the offerors, one of which was issued to Mission Essential and the other to WWLR. However, as an initial matter, we have explained that although discussions may not be conducted in a manner that favors one offeror over another, discussions are not required to be identical among offerors and need only be tailored to each offeror's proposal. *Second Street Holdings, LLC et al.*, B-417006.4 *et al.*, Jan. 13, 2022, 2022 CPD ¶ 33 at 27. Further, here we note that, while the protester is correct that the two ENs differ, the protester's EN was significantly broader in scope than WWLR's EN potentially providing the protester with a greater opportunity than provided to other offerors to expand on its response to this EN.

Specifically, WWLR's second price EN noted that WWLR's subcontractors proposed a specific fringe rate that was lower than their historical rates. The agency asked WWLR to provide an explanation for how providing a fringe rate for each subcontractor lower than the firm's historical fringe rates does not adversely impact each company's ability to recruit and retain qualified personnel. AR, Tab 42, WWLR Price EN R1 at 1. That is, the agency asked for additional explanatory narrative concerning WWLR's existing subcontractor price and fringe rate narrative. *Id.*

By contrast, the protester's second price EN explained that none of the protester's subcontractors provided a price narrative or explanation of fringe benefits at all, and the EN asked the protester to provide price narratives including specific fringe benefit information for its subcontractors. AR, Tab 34, Mission Essential Price EN R1 at 2. Significantly, the protester's EN is expansive enough that the protester could provide precisely the type of narrow revisions that WWLR is being permitted to make (justifications of its subcontractor fringe rates) in addition to other significant categories of revisions (fully revising its absent subcontractor price narratives and fringe benefit explanations). *Id.* That is, the protester's EN is much broader in scope because it fully

encompasses the scope of WWLR's EN and extends beyond it. Moreover, we note that the third offeror, SOSi, was given no opportunity to amend this aspect of its price proposal. Therefore, while the protester is correct that these ENs differ between the offerors, we see no reasonable basis to conclude that the protester was competitively prejudiced by these differences because the protester received the most expansive set of opportunities for revision of its price proposal among the three offerors.

Turning to the management plan EN addressed to WWLR, we likewise see no basis to sustain the protest. Here, the EN raised a concern that WWLR's proposal was internally inconsistent in a way that represented a deficiency. See AR, Tab 40, WWLR Management EN D1 at 1-2. Specifically, the solicitation required that offerors allocate a minimum of 3 percent of contract dollars to woman-owned small businesses (WOSBs). RFP at 187. However, while one table included in WWLR's management plan indicated that WWLR would allocate [DELETED] percent of contract dollars to WOSBs, exceeding the minimum required subcontracting targets for WOSBs by [DELETED] percent, a second table indicated that WWLR would only allocate [DELETED] percent to WOSBs, falling [DELETED] percent short of the minimum subcontracting requirements. Compare AR, Tab 21g, WWLR Feb. 2024 Management Plan Volume at 37 (Figure 13 showing [DELETED] percent of contract value for WOSBs) with *Id.* at 39 (Figure 14 showing [DELETED] percent of contract value for WOSBs). Moreover, the proposal was similarly inconsistent concerning the amount of contract dollars allocated to veteran-owned small businesses--for which the solicitation included no minimum target. *Id.* Specifically, WWLR's proposal indicated that WWLR would allocate [DELETED] percent to veteran-owned small businesses in the first table but allocated [DELETED] percent in the second table. *Id.* The agency's EN noted those discrepancies and permitted WWLR to revise its management plan to resolve the issue. See AR, Tab 40, WWLR Management EN D1 at 1-2.

Crucially, that identical inconsistency was present in WWLR's initial proposal submitted in May 12, 2023. See B-21745.2 AR, Tab 59s, WWLR May 2023 Management Plan Volume at 32 and 34. However, the agency did not identify this deficiency or raise it in discussions with WWLR. Agencies are required to raise all deficiencies or significant weaknesses in discussions, and as a result, the agency's discussions with WWLR were not meaningful because they did not raise this deficiency. See, e.g., *Mission Essential Personnel, LLC*, B-407474, B-407493, Jan. 7, 2013, 2013 CPD ¶ 22 at 5 (discussions, when conducted, must be meaningful--that is, they must identify deficiencies and significant weaknesses that exist in an offeror's proposal). Moreover, we will sustain a protest when the record shows that, although an agency held discussions, it failed to raise a deficiency that was present in an offeror's initial proposal. *Id.* Here, the agency's proposed corrective action to permit WWLR to resolve this deficiency is reasonable because it will correct the agency's earlier error in failing to raise this point in discussions with WWLR.

Moreover, while the protester complains that it is not similarly allowed to revise its management plan, and the agency is, in effect, holding discussions with only WWLR concerning the management plan proposal volume, we likewise see no merit in that

objection. In this regard, we have specifically concluded that when reopening discussions during corrective action to address a fault in a proposal that the agency improperly failed to raise in discussions, an agency may reasonably limit the scope of discussions and go so far as to hold discussions with *only* the affected offeror. *Environmental Chem. Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 20-21 (corrective action proposing to hold discussions with only one offeror was reasonable where the discussions and proposal revisions were limited solely to addressing a fault in offeror's proposal that should have been raised in earlier discussions).

In this same vein, as explained above, the contours of agency corrective action are within its discretion provided the corrective action is designed to remedy the errors identified with a procurement. Here, the parties do not dispute that the errors with the agency's underlying evaluation necessitate reopening discussions. Although the protester challenges the agency's decision to tailor the scope of discussion responses and proposal revisions to match the areas of reopened discussions for each offeror, we see no reason why the agency would be required to revisit those portions of the offerors proposals and its evaluation that were untainted by the underlying procurement errors. An agency's correction of procurement errors does not *per se* require the agency to embark on what would amount to an entirely new competition.

In short, the agency was obligated to allow WWLR to revise this aspect of its management plan, and its approach is appropriate to resolve that concern. In this regard, WWLR will only be placed in the same competitive position that the other offerors, including the protester, were in following their receipt of meaningful discussions. The protester does not allege that its own management plan contains a similar unaddressed deficiency, and accordingly, we see no basis to conclude that the agency was under any obligation to permit other offerors to revise their management plans on these facts.³

Meaningful Discussions

Next the protester argues that the agency failed to engage in equal or meaningful discussions with the protester. Comments at 12-15. Specifically, the protester argues that the agency went beyond the minimum requirements of the FAR by not limiting discussions to deficiencies or significant weaknesses, but instead identified other aspects of the protester's proposal that could be altered or explained to enhance

³ While it is not dispositive to our analysis, we also note that the nature of the issues raised by the management plan EN and WWLR's proposed response were both relatively minor in scope. See AR, Tab 40, WWLR Management EN D1 at 1-2. Specifically, WWLR represented that this inconsistency was an administrative error and that it would amend the second table to move the additional [DELETED] percent from veteran owned small businesses to WOSBs so that the second table would match exactly what WWLR proposed in the first table in its management plan. *Id.* In essence, WWLR proposed to conform its proposal to correct what amounted to a clerical error.

materially the protester's potential for award. *Id.* However, the protester argues that the agency did not raise all such areas in the protester's proposal, falsely leading the protester to believe that the agency had no concerns about areas that it did not raise. *Id.* Specifically, the protester notes that its price is approximately \$50 million (or 34 percent) higher than the next lowest-priced offeror, but the agency did not call that out in its initial discussions and has not now provided the protester with an opportunity to revisit its price. *Id.*

In response, the agency notes that during the corrective action reevaluation, the agency identified no deficiencies or significant weaknesses in the protester's proposal, but did issue the price ENs discussed above to identify areas the protester could revise to improve its potential for award. Memorandum of Law (MOL) at 18-19. The agency notes that the FAR encourages contracting officers to discuss other aspects of the offeror's proposal that could be altered or explained to enhance materially the proposal's potential for award, but expressly notes that the contracting officer is not required to discuss every area where the proposal could be improved. *Id.* at 17. Accordingly, the agency contends that these discussions are meaningful and not misleading, and exceeded the minimum requirements established by the FAR. *Id.* at 19.

Discussions must, at a minimum, address significant weaknesses, deficiencies and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR 15.306(d)(3); *American States Utilities Servs., Inc.*, B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6. Moreover, while issues pertaining to price are within the ambit of discussions these issues are treated distinctly from significant weaknesses and deficiencies in the non-price proposal. See e.g., FAR 15.306(d) (discussions may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract). In this regard, contracting officers are specifically given the discretion, rather than charged with the obligation, to discuss whether an offeror's price is considered to be too high or too low. FAR 15.306(e)(3); see also *Theodor Wille Intertrade AG*, B-409976.3, Jan. 22, 2015, 2015 CPD ¶ 65 at 4 (discussing the discretion given to contracting officers with respect to discussions related to price).

In short, on the facts present here, where the agency did not conclude that the protester's price is unreasonably high and the agency has not otherwise raised comparative price with other offerors, our decisions are clear that a contracting officer is not obligated to raise the fact that an offeror's price is higher than other offerors in discussions. See, e.g., *NOVA Dine, LLC*, B-420454, B-420454.2, Apr. 15, 2022, 2022 CPD ¶ 101 at 6 ("[T]here is no requirement for an agency to inform an offeror during discussions that its price may be too high, where the offeror's price is not considered excessive or unreasonable"); *SOC LLC*, B-419977, B-419977.2, Oct. 15, 2021, 2021 CPD ¶ 370 (notwithstanding the fact that the agency engaged in wide-ranging discussions and included several other discussion questions concerning price,

the agency was not required to raise the fact that the protester's price was higher than other offerors' prices because the protester's price was not unreasonably high). Accordingly, we see no basis to sustain the protest.

The protest is denied.

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