



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: IR Technologies

File: B-414430; B-414430.2; B-414430.3

Date: June 6, 2017

John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for the protester.

James Y. Boland, Esq., and Miranda S. Riemer, Esq., Venable LLP, for MetroStar Systems, Inc., an intervenor.

Robert J. Drone, Esq., and David A.G. Kendrick, Esq., United States Marine Corps, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest issue raised subsequent to a post-award debriefing provided to an offeror in a Federal Supply Schedule procurement is untimely where it was filed more than 10 days after the basis of protest was known; since the procurement was not conducted on the basis of competitive proposals, the timeliness rules based on protests which challenge a procurement conducted on the basis of competitive proposals under which a debriefing is requested and required are not applicable.
 2. Protest challenging agency's price evaluation of awardee on grounds that the agency failed to perform a price realism analysis is dismissed as factually and legally insufficient where protester fails to show that the solicitation required a price realism analysis.
 3. Protest challenging the agency's evaluation of the awardee's key personnel is denied where the evaluation was reasonable and consistent with the solicitation.
 4. Protest alleging that the agency improperly conducted discussions with only the awardee is denied where, even if the exchange constituted discussions, the protester has not shown that it was prejudiced by the agency's action.
-

DECISION

Impact Resources, Inc., dba IR Technologies (IRT), of Springfield, Virginia, protests the issuance of a task order to MetroStar Systems, Inc., of Reston, Virginia, under MetroStar's General Services Administration (GSA) Federal Supply Schedule (FSS) contract, pursuant to request for proposals (RFP) No. M67004-17-R-0007, issued by the United States Marine Corps (USMC), Marine Corps Logistics Command, Albany, Georgia, for information technology support of the agency's enterprise logistics support systems (ELS2). IRT argues that the agency's evaluation of MetroStar's proposal and resulting award decision were improper.

We dismiss the protest in part and deny the protest in part.

BACKGROUND

The ELS2 is a web-enabled system comprised of a suite of applications dedicated to the support of the USMC logistics enterprise. Performance Work Statement (PWS) ¶ 1.1.2. The ELS2 provides visibility of ground equipment and weapon system readiness throughout the Marine Corps and combines current and historical data into one data repository. Id. The ELS2 applications may also be accessed in seconds from anywhere in the world, thereby providing Marines at all leadership levels with a trusted, timely view of ground equipment in order to optimize their management decisions. Id.

The RFP¹ was issued on December 21, 2016, as a small business set-aside, and was limited to offerors who had contracts under GSA FSS No. 70 (General Purpose Commercial Information Technology Equipment, Software, and Services).² RFP at 1, 3; Agency Email to GAO, Mar. 20, 2017, at 1. The solicitation contemplated the issuance of a labor-hour task order for a base year with two 1-year options for support services to sustain and enhance the ELS2 system. RFP amend. 001, at 10. In general terms, the RFP required the contractor to provide qualified personnel, in specified labor categories, to successfully perform all stated PWS tasks. RFP at 54-57. The solicitation also established that task order award would be made on a lowest-price, technically-acceptable (LPTA) basis, based on three evaluation factors: technical approach, past performance, and price. RFP amend. 001, at 45.

¹ The RFP was amended one time. All references are to the final version of the solicitation.

² The solicitation, which was issued to FSS contract holders using the GSA e-Buy system, also specified special item number 132-51 (Information Technology Professional Services). Agency Email to GAO, Mar. 20, 2017, at 1.

Five offerors, including MetroStar and IRT, submitted proposals by the January 9, 2017, closing date. An agency technical evaluation board (TEB) evaluated the acceptability of offerors' nonprice proposals, with the final evaluation ratings and prices of the MetroStar and IRT proposals--the only two proposals found to be compliant with the RFP and technically acceptable--as follows:

	MetroStar	IRT
Technical Approach	Acceptable	Acceptable
Past Performance	Acceptable	Acceptable
Price	\$6,996,549	\$12,194,525

Agency Report (AR), Tab 5, TEB Report, at 2; Tab 8, Price Analysis Team Report, at 2; Contracting Officer's Statement (COS) at 3.

The contracting officer as source selection authority thereafter determined that MetroStar had submitted the lowest-priced, technically-acceptable proposal.³ Id., Tab 4, Award Decision Document, at 1-7.

On February 16, the agency made a task order award to MetroStar and provided notice of award to IRT; this notice included the awardee's price. Id., Tab 12, Notice of Award to IRT. IRT requested a debriefing on February 16, which the agency provided in writing the same day. Id., Tab 13, IRT Debriefing Request at 1; Tab 14, IRT Post-Award Debriefing. IRT then submitted follow-up debriefing questions on February 22, id., Tab, 15, IRT Debriefing Questions, at 4-6, to which the agency responded on March 1.⁴ Id., Tab 16, Agency Debriefing Answers, at 3-4. On March 6, IRT filed its protest with our Office.

DISCUSSION

IRT's protest raises various issues regarding the USMC's evaluation of MetroStar's proposal. IRT first alleges that the agency failed to perform a proper price realism evaluation of MetroStar's price. The protester also contends that MetroStar's price was not based on the estimated staffing levels set forth in the RFP. IRT also asserts the agency failed to properly evaluate MetroStar's technical proposal for required key personnel, and that the agency unfairly held discussions with only

³ The contracting officer also made a separate responsibility determination regarding MetroStar. Id., Tab 9, MetroStar Responsibility Determination.

⁴ The agency's February 16 debriefing gave IRT until February 22 to submit follow-up questions. Id., Tab 14, IRT Post-Award Debriefing.

MetroStar. Had the agency performed a proper evaluation, IRT argues, it would have been selected for award.

We have reviewed all the protester's issues and arguments and find that none provide a basis on which to sustain the protest. We also note that IRT's protest includes numerous allegations that are factually baseless or that we decline to consider for other procedural reasons. We discuss these first before turning to the merits of the remaining issues.

Price Realism Evaluation of MetroStar

IRT alleges that the agency failed to perform a proper price realism evaluation of MetroStar's proposal, and that MetroStar's price is insufficient to perform the required PWS services. Protest at 3. In support thereof, the protester asserts that IRT's team is an "excellent judge of the realism of offerors' pricing," and "only IRT's proposed pricing amount of \$12,194,524 is realistic." Id. at 3-4.

With regard to price evaluation factor, the RFP stated as follows:

The price factor will be evaluated to determine which offeror deemed "technically acceptable" proposed the lowest price to the Government. . . . The Government must determine an offeror's proposal [is] fair and reasonable even with competition and must make the determination that the offeror that is technically acceptable and the low bidder is responsible. This is to mitigate the possibility of "low-ball" and "buy in" proposals.

RFP amend. 001, at 47 (emphasis omitted).

The agency also provided offerors with the following information specifically regarding the evaluation of price realism as follows:

Question #20 – Since this is an LPTA procurement, how will the government evaluate [price] realism to minimize contract risk and poor performance due to unrealistically low bids, to include base and options periods?

Answer: The Government does not intend to evaluate [price] realism; however, the Government is required to determine fair and reasonable even though there is competition and must determine that the technically acceptable low offeror is responsible in accordance with [Federal Acquisition Regulation] FAR [§] 9.104(a)-(g) to mitigate the possibilities of "low-ball" or "buy-in" pricing.

Id. at 4.

As a preliminary matter, the agency and intervenor argue that IRT's protest regarding the price realism evaluation of MetroStar is untimely because it was not filed within 10 days of when IRT knew or should have known of its basis of protest (i.e., the award notice provided to IRT) and because the debriefing exception to our timeliness rules is inapplicable to, as here, FSS procurements. As detailed below, we agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5; Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3. As relevant here, our Bid Protest Regulations require that protests not based upon alleged improprieties in a solicitation:

shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier) with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest ground basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

4 C.F.R. § 21.2(a)(2).

Our Office has also previously determined that FSS procurements conducted pursuant to FAR subpart 8.4 are not procurements conducted on the basis of competitive proposals, and that the debriefing exception to our timeliness rules does not apply to such procurements. The MIL Corp., supra, at 6; see Comfort Inn South, B-270819.2, May 14, 1996, 96-1 CPD ¶ 225 (equating the term "competitive proposals" as set forth in 10 U.S.C. § 2304(a)(2)(B) with negotiated procedures); see also Systems Plus, Inc. v. United States, 68 Fed. Cl. 206, 209-210 (2005) (holding that a procurement under the FSS program pursuant to FAR Subpart 8.4 was not conducted on the basis of "competitive proposals," even though it may involve the use of enhanced competitive procedures). Because the FSS buy here was not a procurement conducted on the basis of competitive proposals, the exception to our timeliness rules allowing protests to be filed within 10 days of a debriefing does not apply.

In its response to the request for dismissal, IRT argues that its protest was timely filed because it could not have known the basis of its price realism protest allegation

until receiving the March 1 responses to debriefing questions, and properly filed its protest within 10 calendar days of that time. We disagree. As set forth above, IRT's protest here is based on a comparative assessment of MetroStar's price to its own--information which IRT knew from the award notice. The record also reflects that IRT's discussion questions and USMC's answers thereto contained no reference to price realism--including the specific questions and answers to which IRT first refers in its response to the dismissal request. AR, Tab 16, Agency Debriefing Answers, at 3-4. In sum, IRT's assertion that the agency failed to properly evaluate MetroStar's unrealistic price was based on information IRT knew of prior to its debriefing, and did not file its protest within the required time.

IRT also argues that its price realism evaluation challenge is timely because the USMC conducted the procurement here pursuant to FAR Part 15. In support thereof, the protester asserts the following: (1) nowhere does the solicitation mention FAR subpart 8.4; (2) the agency made award on an LPTA basis, which is described in FAR Part 15; and (3) the agency stated that it was providing IRT with a debriefing "pursuant to Federal Acquisition Regulation [§] 15.506(b)." IRT Dismissal Request Response, at 2, citing AR, Tab 14, IRT Post-Award Debriefing. We disagree.

First, there is no dispute that the ELS2 support services procurement here was restricted to FSS Schedule No. 70 contract holders, and that the procedures set forth in FAR subpart 8.4 apply to "individual orders for supplies or services placed against [FSS] contracts." FAR § 8.403(a)(1). Likewise, FAR Part 15 "do[es] not apply to . . . orders placed against Federal Supply Schedule contracts . . ." FAR § 8.404(a). There is simply no requirement that FAR subpart 8.4 be expressly referenced in a solicitation for it to be applicable to FSS orders.⁵ See FAR § 8.403. The solicitation also properly included the evaluation criteria on which task order selection would be made, see FAR § 8.405-2(c)(3)(ii), and the fact that the LPTA source selection process is detailed in FAR Part 15 does not alter that this was an FSS procurement. Lastly, a contracting officer's mischaracterization is not determinative of whether a debriefing is a required one, see MIL Corp., supra, at 7 n.5, nor can it alter the fact that this was an FSS procurement to which the procedures of FAR subpart 8.4, rather than FAR Part 15, applied. See generally Source Diversified, Inc., B-403437.2, Dec. 16, 2010, 2010 CPD ¶ 297 at 5 n.8.

In any event, we also find IRT's assertion that the agency failed to perform a proper price realism evaluation of MetroStar to be legally and factually insufficient. Our Bid

⁵ The amended RFP did, however, include a prospective offeror's question regarding the solicitation requirement for a price buildup when, "[p]er FAR 8.404(d) 'GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hours rates, under schedule contracts to be fair and reasonable.'" RFP amend. 001, at 6.

Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3; Pacific Photocopy & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

Generally, for fixed-price contracts (or orders), an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects a lack of technical understanding or risk (see FAR § 15.404-1(d)(3)), but it may do so only when offerors have been advised that the agency will conduct such an analysis. American Access, Inc., B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 4-5; National Disability Rights Network, Inc., B-413528, Nov. 16, 2016, 2016 CPD ¶ 333 at 9. Absent a solicitation provision advising offerors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis in awarding a fixed-price contract. American Access, Inc., supra, at 5.

Here, the record is unambiguous that the solicitation, as amended, did not provide for a price realism analysis and as such, the agency was not required to conduct one. In fact, as set forth above, the RFP expressly informed offerors that "[t]he Government does not intend to evaluate [price] realism," and would only assess whether an offeror's price was "too low" as part of responsibility--an aspect of the agency's evaluation of MetroStar which IRT does not protest.⁶ In sum, IRT's assertion that the agency failed to perform a proper price realism analysis, where no such price realism evaluation was required, does not state a valid basis for protest, and we dismiss this allegation accordingly.⁷

⁶ Moreover, an agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility, which we will not review except for protests that allege that definitive responsibility criteria in the solicitation were not met, and protests that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. Bid Protest Regulations, 4 C.F.R. § 21.5(c).

⁷ IRT also protests that the agency failed to properly evaluate MetroStar's proposal for unbalanced pricing. Unbalanced pricing exists when the prices of one or more contract line items are significantly overstated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). FAR § 15.404-1(g)(1); XPO Logistics Worldwide Gov't Servs., LLC, B-412628.6, B-412628.7, Mar. 14, 2017, 2017 CPD ¶ 88 at 8; Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 15. Here, (continued...)

MetroStar's Staffing Levels

IRT also alleges that its proposed price was based on the RFP's estimated staffing levels while MetroStar's price was not. Protest at 4-6. The protester argues that the solicitation's estimated staffing levels were in fact staffing requirements upon which offerors were to base their proposed prices. Id. at 5.

As set forth above, the solicitation contained a PWS which described the tasks that the contractor was to perform. The RFP also included specified labor categories and estimated staffing levels--stated in terms of full-time equivalents (FTE) and annual labor hours--for each labor category. See RFP at 56 ("Labor Category/Level Given for Guidance/Estimated Quantity"), RFP at 5-26 ("Estimated Quantity" [of labor hours]); RFP amend. 001, at 32-43 ("Estimated # of billets").⁸ The record reflects that MetroStar's proposal did not use the RFP's estimated staffing levels in all instances, see AR, Tab 10, MetroStar Proposal, Vol. III, Price Proposal, at 2-27, which the agency was aware of when performing its evaluation. AR, Tab 4, Award Decision Document, at 3-4; Tab 6, TEB Emails, at 5 ("[MetroStar] listed more hours in some senior positions...this position may have more skill than a junior in the same position; therefore, the senior can accomplish all tasks and they do not need the junior positions").

(...continued)

the protester's assertion of an "enormous price disparity between MetroStar and IRT," Protest at 6, is not evidence of unbalanced pricing. See ABSG Consulting, Inc., B-404863.7, June 26, 2013, 2013 CPD ¶ 185 at 6 (low prices, by themselves, do not themselves establish or create the risk inherent in unbalanced pricing). Moreover, in response to this allegation, the agency provided a detailed discussion of its pricing evaluation. Memorandum of Law (MOL), Mar. 14, 2017, at 6-7; COS at 4. In its comments responding to the agency report, IRT does not discuss the merits of the agency's response or in any way substantively rebut the agency's position, but rather, merely recites verbatim its initial protest allegation. Compare IRT Comments, Mar. 27, 2017, at 3, with Protest at 6. Where, as here, an agency provides a detailed response to a protester's assertion and the protester either does not respond to the agency's position or provides a response that merely references or restates the original protest allegation without substantively rebutting the agency's position, we deem the initially-raised argument abandoned. Bannum Inc., B-411586.2, Jan. 6, 2016, 2016 CPD ¶ 13 at 4; Avaya Gov't Solutions, Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 3-4.

⁸ The agency contracting officer and evaluators were also of the view that the RFP's labor estimates were given as guidance, and were not requirements of the PWS. AR, Tab 16, Agency Debriefing Answers, at 3-4; COS at 2, 4.

As a preliminary matter, IRT does not assert that MetroStar's proposed staffing levels were inadequate to successfully perform the PWS tasks, or that the agency's evaluation of MetroStar's technical proposal was unreasonable. See Protest at 4-6; IRT Comments at 1-3. Rather, IRT argues that MetroStar's price was too low because it was not based on the allegedly-required RFP staffing estimates, and that the USMC's price evaluation of MetroStar was improper because "the Agency gave no explanation why MetroStar's proposed price was not too low" IRT Comments at 2. IRT further contends that "[a]n agency's price realism analysis will not withstand scrutiny if the agency simply concludes, without analysis or documentation, that a competitor's significantly lower price is realistic." Id. at 3, citing Northrop Grumman Info. Tech., Inc., et al., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 at 19. We find it wholly irrelevant, however, why MetroStar's price was, as the protester alleges, "too low." As we have previously determined, the agency was not required to conduct a price realism evaluation of offerors' proposals because the solicitation, as amended, did not provide for a price realism analysis. In sum, IRT's protest here is but a variation of its earlier assertion that the agency failed to perform a proper price realism analysis, and fails to state a valid basis for protest where no such price realism evaluation was required.⁹

Evaluation of MetroStar's Key Personnel

Next, IRT protests the agency's evaluation of MetroStar's technical approach proposal. The protester argues that MetroStar failed to propose three operations research analysts, as required by the RFP, for key personnel positions.

For the technical approach proposal, the solicitation required offerors provide "evidence of clear understanding of the [PWS's] technical requirements and . . . expected outcomes and expressly provide detailed information which sufficiently supports it." RFP amend. 001, at 45. The PWS identified various key personnel positions, including that of operations research analyst, and required offerors to submit resumes and letters of commitment for all key personnel. PWS at ¶ 1.5.11. The RFP also stated that the estimated staffing level for the operations research

⁹ IRT also asserts that by accepting MetroStar's lower staffing levels, the agency thus "does not believe that its [staffing] estimates are accurate." Protest at 4. We find this assertion unpersuasive. The RFP required the contractor to successfully perform the stated PWS tasks, and provided estimates of the staffing which the USMC believed necessary to do so. The fact that the agency subsequently determined that MetroStar could successfully perform all PWS requirements with a different staffing mix and/or fewer individuals than the RFP's staffing estimates is not a basis to conclude that the agency's estimates were inaccurate.

analyst labor category was three, and all were considered key personnel.¹⁰ RFP amend. 001, at 3, 5-6, 41.

MetroStar, in its technical approach proposal, identified three individuals for the operations research analyst positions, and provided the required resumes and letters of commitment. AR, Tab 10, MetroStar Proposal, Vol. I, Technical Approach Proposal, at 19, 66-74, 84-86. In its price proposal, MetroStar indicated that it was proposing a total of 3,760 hours annually for the “Operations Research Analyst (3 positions)” contract line item. *Id.*, Vol. III, Price Proposal, at 6. MetroStar’s price proposal also included a table entitled “Back Up for Section B.” *Id.* at 25. This table showed 1880 hours (*i.e.*, a MetroStar man-year) each for “Operations Research Analyst #1” and “Operations Research Analyst #2,” and no hours (“-”) for “Operations Research Analyst #3.”¹¹ AR, Tab 10, MetroStar Proposal, Vol. III, Price Proposal, at 25, 28.

The agency, as part of its evaluation, found MetroStar’s price proposal to be unclear as to what the awardee was proposing regarding labor hours and the number of positions, including as to the operations research analyst contract line item. AR, Tab 17, Agency Memorandum for Record and Clarification Emails, at 1 (“[t]he unit price and total amount is [sic] correct based on the number of hours listed but they do not equate to the number of positions shown in the Extended Description”). The agency requested that MetroStar clarify its price submission, and MetroStar responded by stating that, with regard to the operations research analyst contract line item, the offeror was proposing 3 personnel and a total of 3760 hours annually. *Id.* at 4 (MetroStar Letter to USMC, Feb. 3, 2017). The TEB thereafter found MetroStar’s technical approach proposal, including key personnel, to be acceptable. AR, Tab 5, TEB Report, at 7-10.

IRT argues the agency’s evaluation of MetroStar’s key personnel (*i.e.*, operations research analysts) was unreasonable. The protester contends that because MetroStar’s price proposal showed labor hours for only two operations research analyst positions, MetroStar violated the RFP by not proposing three operations research analyst key personnel.¹²

¹⁰ The RFP did not, however, state that any of the key personnel positions, including that of operations research analyst, had to be filled with full-time employees. See PWS ¶ 1.5.11; RFP amend. 001, at 32-43.

¹¹ MetroStar’s contracts manager stated that the table here was not intended to show actual labor hours for each individual, but rather, the offeror’s total hours for each labor category. MetroStar Supp. Comments, Apr. 10, 2017, MetroStar Contracts Manager Declaration, at 2.

¹² IRT does not, however, allege that MetroStar was required to propose full-time individuals for any of the operations research analyst positions. Thus, per the

(continued...)

Where, as here, an agency issues a solicitation to FSS contract holders pursuant to the procedures in FAR subpart 8.4 and conducts a competition for the issuance of an order, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. AllWorld Language Consultants, Inc., B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ ___ at 3; Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Electrosoft Servs., Inc., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5; Technology & Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 4.

We find the agency's evaluation of MetroStar's key personnel to be reasonable. As a preliminary matter, key personnel was part of the technical approach proposal, and MetroStar's technical approach proposal was unambiguous in that the offeror met all stated requirements regarding the operations research analyst positions (IRT does not dispute the fact that MetroStar's technical approach proposal included names, resumes, and commitment letters for three operations research analysts). Moreover, even assuming the agency was required to consider MetroStar's price submission when evaluating the awardee's technical approach, we find the agency reasonably determined that MetroStar had proposed three operations research analysts. MetroStar, per its clarification letter, explained that although it was proposing fewer hours than the agency's estimate here, those labor hours would be spread across the three operations research analyst personnel. In sum, we find IRT's assertion that MetroStar only proposed two operations research analysts who would actually perform work to be without merit, and this challenge is denied.

Unequal Discussions

Lastly, IRT protests that the USMC improperly conducted discussions with only MetroStar. The protester asserts that the agency allowed MetroStar to resolve an inconsistency in its price proposal, but "treated IRT unequally and unfairly by failing to [also] hold discussions with [IRT]." Supp. Protest, Apr. 13, 2017, at 2. As explained below, we conclude that IRT has failed to demonstrate that it was prejudiced by the agency's action.

(...continued)

protester's argument, MetroStar's proposal would have been acceptable if the awardee's pricing summary table had indicated even one labor hour against the third operations research analyst position.

Section 15.306 of the FAR describes a spectrum of exchanges that may take place between an agency and offeror during negotiated procurements.¹³ Clarifications are “limited exchanges” between the agency and an offeror for the purpose of clarifying certain aspects of a proposal or to resolve minor or clerical errors. FAR § 15.306(a)(2); Ricoh USA, *supra*, at 6. Discussions, on the other hand, occur when a contracting officer communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11-12; *see* FAR § 15.306(d). If a procuring agency holds discussions with one offeror, it must hold discussions with all offerors. *See* FAR 15.306(d); Deloitte Consulting, LLP, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 17.

IRT argues that the agency’s exchange with MetroStar constituted discussions because it was necessary to determine whether MetroStar had complied with the solicitation’s key personnel requirements regarding operations research analysts. The agency and MetroStar argue that the parties’ exchange was a limited one and thereby constituted clarifications. In support thereof, the agency asserts that MetroStar’s response did not alter the offeror’s pricing, staffing, or technical submission in any way. The agency also contends that MetroStar’s response, as with regard to the operations research analysts, clarified that the labor hours proposed would be spread across the three named individuals.

Even assuming for the sake of argument that IRT’s claims regarding unequal discussions have merit--and it is certainly not clear that they do--we conclude that there is no reasonable possibility that the firm was prejudiced by the agency’s action. Competitive prejudice is an essential element of every 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 for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *See* HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; L&G Tech. Servs., Inc., B-408080.2, Nov. 6, 2013, 2014 CPD ¶ 47 at 6.

¹³ As this was an FSS procurement, the negotiated procurement provisions of FAR Part 15 do not directly apply. However, our Office has noted that where agencies use the negotiated procurement techniques of FAR Part 15 in FSS buys, such as discussions, we will review the agency’s actions to ensure they are fair and equitable. In making this determination, we will review such protests using the standards applicable to negotiated procurements as a guide. PricewaterhouseCoopers Public Sector, LLP, B-413316.2, B-413316.3, Dec. 27, 2016, 2017 CPD ¶ 12 at 13 n.19; Ricoh USA, B-411888.2, Nov. 18, 2015, 2015 CPD ¶ 355 at 5-6.

Here, the record reflects that IRT's proposal was already found to be acceptable under both the technical approach and past performance factors, and its price--which was based on discounts of rates that GSA had already determined to be fair and reasonable--was not considered to be unreasonably high. AR, Tab 5, TEB Report, at 11-14; Tab 8, Price Analysis Team Report, at 1-2; see Tab 11, IRT Proposal, Vol. III, Price Proposal, Encl. 4, Proposed Labor Rates. Thus, even if the agency had held discussions with IRT, we fail to see what if anything would have been discussed. IRT has simply not established that its competitive position would have improved through discussions insofar as: (1) there were no ambiguous aspects found in its proposal; (2) there was no opportunity for the protester to improve its technical acceptability ratings; and (3) the protester has not stated that it would have changed anything in its proposal even if provided the opportunity to do so. See L&G Tech. Servs., Inc., supra; PAE Gov't Servs., Inc., B-407886 et al., Mar. 22, 2013, 2013 CPD ¶ 92 at 8. Accordingly, we deny this allegation.

The protest is dismissed in part and denied in part.

Susan A. Poling
General Counsel