



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

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: NCS/EML JV, LLC

File: B-412277; B-412277.2; B-412277.3

Date: January 14, 2016

John C. Dulske, Esq., Joan Kelley Fowler Gluys, Esq., and Bryan L. Kost, Esq., The Law Offices of Dulske & Gluys, P.C., for the protester.

Steven J. Koprince, Esq., Matthew T. Schoonover, Esq., and Matthew P. Moriarty, Esq., Koprince Law LLC, for Pegasus Support Services, LLC, the intervenor.

Laura A. Larkin, Esq., Department of the Navy, for the agency.

Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the awardee's corporate experience, past performance, and technical approach is denied where record supports the reasonableness of the agency's evaluation.
 2. Protest that awardee's proposal would not comply with Federal Acquisition Regulation clause 52.219-14, limitations on subcontracting, is dismissed, where the clause was not included in the solicitation.
 3. Protest challenging agency's decision to enter into discussions with offerors is denied where the agency reasonably exercised its discretion to engage in discussions in accordance with the terms of the solicitation.
-

DECISION

NCS/EML Joint Venture, LLC, (NCS/EML) a small business of Louisville, Kentucky, protests the award of a contract to Pegasus Support Services, LLC, (Pegasus) a small business of Norfolk, Virginia, by the Department of the Navy, Naval Facilities Engineering Command under request for proposals (RFP) No. N40085-15-R-7738 for maintenance center equipment services at the Marine Corps Logistics Base

(MCLB) located in Albany, Georgia.¹ NCS/EML contends that the Navy's evaluation and award decision were unreasonable.

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

BACKGROUND

On July 1, 2015, the Navy issued the RFP as a small business set-aside, seeking proposals from offerors for maintenance center equipment services at the MCLB.² RFP at 1, 8; RFP amend. 0002, at 10. The solicitation was conducted pursuant to Federal Acquisition Regulation (FAR) part 15 and contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contract with a 12-month base period and four 12-month option periods. RFP at 8; RFP amend. 0002, at 102. Pursuant to the RFP, award was to be made on a best-value basis to the offeror that submitted the lowest-priced, technically acceptable (LPTA) proposal. RFP amend. 0002, at 102.

The solicitation provided that the agency would initially evaluate the offerors' proposed prices and place the offers in the order of lowest to highest price. Id. The three lowest-priced proposals would then be evaluated under the following non-price factors: corporate experience, technical approach, safety, and past performance. Id. at 102-105. In order to receive an overall acceptable rating, a proposal had to receive an acceptable rating under each of the non-price evaluation factors. Id. at 102. The RFP indicated that if one of the proposals received in response to the solicitation was found to be technically acceptable overall, the Navy would make award to the offeror with the lowest price. Id. Although the solicitation stated that the agency intended to evaluate proposals and award a contract without discussions, the solicitation also reserved the agency's right to conduct discussions if the contracting officer later determined them to be necessary. Id.

With regard to the corporate experience factor, the RFP required offerors to identify one to three projects that were similar in size, scope, and complexity to the work requirements specified in the RFP. Id. at 103. The solicitation established that a

¹ The primary mission of the MCLB is to rebuild and repair ground support and combat support equipment. RFP amend. 0002, at 11.

² The RFP's performance work statement (PWS) required maintenance and servicing of the following mechanical systems, electrical systems, and equipment: paint booths and oven systems; blast booth systems; fast acting door systems; machine tools; dynamometer systems; hydraulic test bench systems; weight handling equipment; crane trackage; compressed air systems; air pollution control systems; steam stall/pit systems; and parts washer systems. RFP amend. 0002, at 42.

project would be considered similar in size, scope, and complexity to the RFP's work requirements if it was for mechanical and electrical systems support, included preventative maintenance and service calls performed concurrently on a wide range of mechanical and electrical systems, and was valued at \$1 million or more, per year. Id. The RFP provided that the agency's assessment of an offeror's relevant experience would be used as a means of evaluating the capability of the offeror to successfully meet the requirements of the RFP. Id.

With regard to the technical approach factor, the RFP required offerors to submit narrative responses that clearly demonstrated their understanding of, and approach to, accomplishing the complexity and magnitude of service requirements set forth in the performance objectives and standards of the solicitation's PWS. Id. As relevant here, the RFP required offerors to submit a phase-in transition plan as a part of their technical approach that described what the offeror would "do to 'start-up' performance of th[e] contract." Id. The solicitation also established a 30-day transition period. Id. The RFP explained that the evaluation of the technical approach factor would be based on whether an offeror's proposal demonstrated an acceptable understanding of the solicitation's performance objectives and standards; provided a feasible technical approach with the capability to, at least, meet solicitation performance objectives and standards; and offered a low to moderate performance risk to the Navy. Id. at 104.

With regard to the past performance factor, the RFP required offerors to submit past performance information for at least one, but no more than three, projects of similar size, scope, and complexity to the work described in the solicitation that were completed within the past five years from the date of the RFP's issuance. Id. at 105. An offeror's past performance information would be evaluated to determine whether the information reflected a trend of satisfactory performance considering a pattern of successful completion of tasks; a pattern of deliverables that were timely and of good quality; a pattern of cooperativeness and teamwork; the recency of tasks performed that were identical to, similar to, or related to, the RFP tasks; and a respect for stewardship of government funds. Id.

The agency received three proposals by the RFP's August 5 closing date, including those from NCS/EML and Pegasus. Agency Report (AR), Tab 9, Pre-Discussion Source Selection Authority (SSA) Memorandum (Sept. 11, 2015), at 1. A Navy contract specialist first evaluated the offerors' prices in accordance with the solicitation's criteria. AR, Tab 8, Initial Source Selection Evaluation Board (SSEB) Report (Aug. 11, 2015), at 23-31. The prices submitted by NCS/EML and Pegasus were determined to be fair and reasonable, but the agency identified calculation errors in both price proposals, and had concerns that some of the individual contract line item (CLIN) and sub-exhibit line item (ELIN) pricing were either too high or too low. Id. at 27-31.

Next, a Navy technical evaluation team (TET) evaluated the proposals under the solicitation's non-price evaluation factors. Id. at 2. The TET's evaluation identified deficiencies in the proposals submitted by NCS/EML and Pegasus. Id. at 3, 7-8, 12-13, 15-16. With regard to NCS/EML, the TET assigned a deficiency under the RFP's safety factor because the evaluators concluded that the proposal did not provide information required by the solicitation. Id. at 16. The TET also identified a significant weakness in NCS/EML's proposal under the technical approach factor. Id. at 12.

With regard to Pegasus' proposal, the TET assigned deficiencies under the corporate experience and technical approach evaluation factors. Id. at 7-8, 12-13. The agency assigned a deficiency under the RFP's corporate experience factor because the dollar values of the projects Pegasus submitted were identical, leading the TET to believe that there was an error in the information submitted. Id. at 7. Pegasus' proposal also received a deficiency under the technical approach factor because it contained a chart indicating a 45-day phase-in plan, while the solicitation required a 30-day phase-in plan.³ Id. at 13.

Based on the agency's evaluation of offerors' initial proposals, the Navy decided to establish a competitive range and conduct discussions.⁴ AR, Tab 9, SSA Pre-Discussion Memorandum (Sept. 11, 2015), at 1. Discussion letters were issued to all offerors on September 11.⁵ AR, Tab 12, SSEB Post-Discussion Report (Sept. 19, 2015) at 2. Both NCS/EML and Pegasus submitted responses to the agency's discussion questions by the September 17 deadline. Id.

The evaluators reconvened on September 19, to evaluate the offerors' responses to the agency's discussion letters. Id. The Navy determined that both NCS/EML and Pegasus adequately addressed the agency's pricing concerns.⁶ Id. at 29-32. With

³ The TET also identified a significant weakness in Pegasus' proposal under the technical approach factor. Id. at 15.

⁴ The third offeror's proposal was evaluated by the TET as being technically acceptable overall, but its overall price was evaluated as being unreasonable. AR, Tab 8, Initial SSEB Report (Aug. 11, 2015), at 25, 32.

⁵ The agency rescinded two of NCS/EML's discussion questions--related to the safety factor--after the agency received an inquiry by NCS/EML. AR, Tab 11, NCS/EML Rescindment Letter, at 1. The Navy did not rescind the other concerns the agency evaluators had with regard to the significant weakness identified in NCS/EML's technical approach, nor did it rescind the questions the agency had with respect to aspects of the firm's pricing. Id.

⁶ The overall pricing from the third offeror remained unreasonable. AR, Tab 12, SSEB Post-Discussion Report (Sept. 19, 2015), at 29.

regard to the non-price factors, the TET evaluated the offerors' revised proposals and determined that all were technically acceptable. Id. at 3, 7-8, 10-11, 19.

Based on the agency's evaluation of the revised proposals, the SSA determined that Pegasus' offer represented the best value to the Navy, as the lowest-priced, technically acceptable proposal. AR, Tab 13, SSA Post-Discussion Memorandum, at 1. On September 28, the Navy made award to Pegasus and sent notification of its award decision to NCS/EML. Contracting Officer (CO) Statement at 3; AR, Tab 15, NCS/EML Unsuccessful Offeror Notification, at 1. After receiving a debriefing, NCS/EML filed this protest with our Office.

DISCUSSION

NCS/EML's protest raises multiple challenges with regard to the Navy's evaluation of the awardee's proposal and resulting award decision. The protester challenges the agency's evaluation of Pegasus' proposal under the corporate experience, past performance, and technical approach factors. NCS/EML also argues that the awardee's proposal violated the requirements of FAR clause 52.219-14, limitations on subcontracting. Additionally, the protester asserts that the Navy's award decision is flawed because the agency failed to follow the RFP's award criteria by opening discussions. We have considered each of NCS/EML's various arguments, and find no basis on which to sustain the protest.

Corporate Experience and Past Performance Evaluation

NCS/EML challenges the agency's evaluation of the awardee's corporate experience and past performance. With regard to corporate experience, the protester argues that Pegasus lacks the corporate experience necessary to be rated acceptable. In this regard NCS/EML contends that the projects identified by the awardee do not qualify as similar in size, scope, and complexity to the work requirements in the solicitation. The protester asserts that the Navy's evaluation of the awardee's proposal deviated from the solicitation's stated evaluation criteria, as evidenced by the agency's recognition that the work performed under Pegasus' prior contracts was somewhat smaller in scope, rather than similar in scope to the work required by the RFP.

With regard to the agency's evaluation of Pegasus' past performance, the protester alleges that the agency cannot justify the acceptable rating it assigned to Pegasus' proposal because the awardee does not have any relevant past performance. NCS/EML contends that the Navy failed to properly analyze the past performance information that was submitted by the awardee, and that there is nothing in the record to confirm that the Navy actually performed the evaluation required by the solicitation.

Our Office reviews an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. L&J Bldg. Maint., LLC, B-411827, Oct. 27, 2015, 2015 CPD ¶ 344 at 3; Herve Cody Contractor, Inc., B-404336, Jan. 26, 2011, 2011 CPD ¶ 27 at 3. An agency has broad discretion, when evaluating an offerors' experience and past performance, to determine whether a particular contract is relevant. L&J Bldg. Maint., LLC, *supra*. The evaluation of experience and past performance is, by its very nature, subjective, and an offeror's disagreement with an agency's evaluation judgements, without more, does not demonstrate that those judgements are unreasonable. Id.

We find that the agency reasonably assigned an acceptable rating to Pegasus' proposal under the corporate experience and past performance factors. Under the corporate experience factor, the RFP established the following acceptability criteria: "[a] project considered similar in size, scope, and complexity to the work in the requirements specified in the RFP would be for mechanical and electrical systems support, to include preventative maintenance and service calls, performed on a wide range of mechanical and electrical systems concurrently with a yearly value of or exceeding approximately \$1,000,000 per year." RFQ amend. 0002, at 103. Additionally, the solicitation provided that an assessment of the offeror's relevant experience would be used as a means of evaluating the capability of the offeror to successfully meet the requirements of the RFP. Id.

The TET evaluated the projects submitted by Pegasus and determined that they met the RFP's criteria for acceptability. The Navy evaluators recognized that although the projects submitted by Pegasus did not demonstrate experience with the exact same kinds of mechanical and electrical systems provided for in the RFP's PWS, the awardee's prior projects included experience with a wide range of mechanical and electrical systems concurrently. AR, Tab 12, SSEB Post-Discussion Report (Sept. 19, 2015), at 7. The evaluators determined that Pegasus' discussion response resolved the concerns that were initially identified, because the first contract was subsequently evaluated as being over \$9 million while the second project was evaluated as being \$29.5 million. Id. at 8. On this record, we find that the Navy's evaluation of Pegasus' corporate experience was reasonable.

While the protester makes much of the agency's characterization of the projects as being slightly smaller in scope than the work identified in the RFP, the protester has not demonstrated that the projects fail to meet the solicitation's acceptability criteria. Rather, the protester's arguments demonstrate its disagreement with the agency's evaluation, which did not require, as the protester would have preferred, that the projects be for the same mechanical and electrical systems identified in the RFP's PWS. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. HP Enter. Servs., LLC,

B-409169.3, B-409169.4, June 16, 2014, 2014 CPD ¶ 179 at 7. We will not read a provision restrictively where the terms of the solicitation do not indicate that such a restrictive interpretation was intended. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 4. Accordingly, we decline to adopt the protester's reading of the solicitation's evaluation terms, since there is nothing in the RFP to indicate that such a restrictive interpretation was intended. Id.

With regard to the agency's evaluation of Pegasus' past performance, we similarly find the agency's evaluation unobjectionable. The TET concluded that Pegasus' proposal merited an acceptable past performance rating because the information provided demonstrated Pegasus' favorable record of relevant past performance. AR, Tab 12, SSEB Post-Discussion Report (Sept. 19, 2015) at 25-26. While the contemporaneous record does not provide a robust and in-depth explanation describing why the agency chose to assign an acceptable rating to Pegasus' proposal under the past performance factor, NCS/EML's protest fails to establish why the rating assigned is unreasonable. For example, the TET noted that Pegasus received very good and exceptional past performance ratings under the two projects submitted with its proposal. Id. at 25. Furthermore, the TET found that the projects submitted were relevant, after the awardee submitted additional information to the agency after discussions, correcting the erroneous dollar values previously listed. Id. at 26. On this record, we have no basis to question the agency's judgments.⁷ See L&J Bldg. Maint., LLC, supra.

Technical Approach Evaluation

Next, NCS/EML challenges the agency's evaluation of the technical approach established in the awardee's proposal. The protester argues that Pegasus' proposal should have received an unacceptable rating because its phase-in transition plan did not meet the solicitation's minimum requirements. The protester also contends that Pegasus' proposal should have received an unacceptable rating

⁷ The agency initially rated Pegasus' proposal as acceptable under the RFP's past performance evaluation factor because it concluded that Pegasus had no relevant past performance history. AR, Tab 8, Initial SSEB Report (Aug. 11, 2015), at 21-22. The Navy reached this conclusion because both projects that were identified in Pegasus' proposal listed the same dollar value, leading the TET to believe that the information was submitted in error. Id. at 7-8, 21-22. The protester contends that it was inappropriate for the Navy to have initially assigned the acceptable past performance rating to Pegasus' proposal because it is unreasonable for an offeror without relevant experience to receive an acceptable past performance rating. This argument has no merit; in the context of an LPTA procurement, it is unobjectionable to assign an acceptable past performance rating to offerors without any relevant past performance. Y&K Maint., Inc., B-405310.2, Oct. 17, 2011, 2011 CPD ¶ 239 at 7

because it failed to demonstrate an acceptable understanding of the RFP's performance objectives and standards and failed to provide a feasible technical approach to perform the contract. In this regard, NCS/EML argues that the awardee's proposal only partially mimics the performance objectives and standards outlined in the RFP. The protester also asserts that the Navy failed to consider, or document, whether Pegasus' proposal demonstrated a low to moderate performance risk to the agency, as required by the solicitation.⁸

In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. A protester's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Based on our review of the record we find the agency's evaluation was reasonable. In its evaluation of Pegasus' initial proposal, the TET assigned one significant weakness and one deficiency under the technical approach factor. AR, Tab 8, Initial SSEB Report (Aug. 11, 2015), at 13. The evaluators concluded that Pegasus' proposal should be assigned a deficiency because the RFP required a 30-day phase-in plan, but the awardee's initial phase-in plan proposed a 45-day phase-in timeframe.⁹ Id. The discussion response submitted by Pegasus addressed this concern. AR, Tab 19, Pegasus Final Proposal Revisions (FPR), at 9-12. After evaluating Pegasus' response to discussions, the TET concluded that Pegasus had resolved the significant weakness and deficiency previously identified, and therefore, Pegasus' proposal met the minimum requirements of the solicitation. AR, Tab 12, SSEB Post-Discussion Report (Sept. 19, 2015) at 15.

While the protester contends that language in the awardee's proposal, which describes the phase-in schedule as a flexible draft, did not commit to meeting the

⁸ The protester also alleges that Pegasus' discussion response failed to address the agency's questions related to the RFP's technical approach factor, and therefore should have been rated unacceptable. Factually, this allegation lacks merit. Contrary to NCS/EML's representation, the record demonstrates that Pegasus responded to, and addressed, each of the agency's concerns. AR, Tab 19, Pegasus FPR, at 28; Tab 12, SSEB Post-Discussion Report (Sept. 19, 2015), at 15.

⁹ The initial review conducted by the TET recognized that the chart provided by Pegasus with its phase-in plan indicated a 45-day timeline, but noted that the narrative of Pegasus' offer described a 30-day phase-in timeline. AR, Tab 8, Initial SSEB Report (Aug. 11, 2015), at 13.

solicitation's minimum 30-day requirement, the agency explains that it interpreted Pegasus' flexibility to mean that the awardee would meet the requirement as demonstrated by its willingness to "adapt [the phase-in plan] to any period directed by the contracting officer." AR, Tab 19, Pegasus FPR, at 9. We find nothing objectionable with the agency's evaluation in this regard.

Next, the protester argues that there was nothing in the awardee's proposal to demonstrate that it had a feasible technical approach or that it understood the RFP's PWS performance objectives and standards because Pegasus' proposal merely mimics similar language in the RFP. NCS/EML essentially contends that Pegasus' proposal should have been more detailed, and because it was not, should have been rated unacceptable. In response, the agency argues that there is nothing improper with its decision to assign an acceptable rating to Pegasus' proposal under the technical approach factor because the evaluators did not identify any deficiencies or significant weaknesses that would merit such a rating. In fact, the record demonstrates that the agency's evaluators recognized that the awardee's proposal used language similar to language in the RFP but nevertheless concluded that the proposal demonstrated a minimum understanding of the solicitation's requirements. TET Affidavit at 1. Although NCS/EML disagrees, the record demonstrates that the agency properly considered Pegasus' proposal and reasonably determined it to be acceptable.

The protester also argues that the contemporaneous record does not reflect whether the Navy performed a risk analysis on Pegasus' proposal to determine whether it offered a low to moderate performance risk to the agency. In response, the agency explains that the risk analysis it performed was inherent in the TET's finding that the proposal submitted by Pegasus met the minimum requirements of the solicitation. Although we agree that the contemporaneous record does not contain a separate and independent risk assessment analyzing the level of risk that was presented by Pegasus' proposal, the protest does not establish why Pegasus' proposal presents anything other than a low to moderate level of risk. Here, the protester's disagreement with the agency's conclusion, without more, does not establish a sufficient basis upon which we can sustain its protest. Ben-Mar Enters., Inc., supra.

Limitations on Subcontracting

With respect to subcontracting, NCS/EML argues that the awardee's offer failed to comply with FAR clause 52.219-14, limitations on subcontracting. We dismiss this aspect of NCS/EML's protest. While the solicitation was set aside for small businesses, the RFP did not incorporate FAR clause 52.219-14. Indeed, NCS/EML's protest acknowledges that the clause was not included in the

solicitation.¹⁰ Accordingly, this allegation is factually and legally insufficient, and we will not consider it.¹¹ 4 C.F.R. §§ 21.1(c)(4), 21.5(f); Excalibur Laundries, Inc., B-405814, B-405814.2, Jan. 3, 2012, 2012 CPD ¶ 1 at 6 (allegation that the awardee's proposal did not comply with FAR clause 52.219-14 is factually and legally insufficient where the solicitation--set aside for small businesses--did not incorporate the clause).

Award Decision

Finally, NCS/EML argues that the award to Pegasus was improper. The protester contends that the agency failed to follow the terms of the solicitation, which required the agency to award a contract to NCS/EML based upon initial proposals, because it was the only offeror to initially submit a technically acceptable proposal with a fair and reasonable price. The protester asserts that the express terms of the solicitation should have prevented the agency from entering into discussions once the Navy rescinded the deficiency assigned to NCS/EML's proposal under the safety factor.

An agency's discretion to hold discussions is quite broad, and is not generally reviewed by this Office. Alliance Worldwide Distributing, LLC, B-408491, Sept. 12, 2013, 2013 CPD ¶ 223 at 3. There are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions. L-3 Services, Inc., B-406292, Apr. 2, 2012, 2012 CPD ¶ 170 at 14. We find that the agency properly exercised its discretion to engage the offerors in discussions.

¹⁰ The protester nonetheless asserts that the clause "is incorporated [into the contract] by operation of law pursuant to the Christian doctrine." Protester's Dismissal Request Response (Oct. 22, 2015) at 3. This assertion is without merit. The "Christian Doctrine" provides only for incorporation by law of certain mandatory contract clauses into otherwise validly awarded government contracts; it does not stand for the proposition that provisions are similarly incorporated, by law, into solicitations. See QuesTech, Inc., B-255095, Feb 7, 1994, 94-1 CPD ¶ 82 at 5-6; see also Goel Servs., Inc., B-310822.2, May 23, 2008, 2008 CPD ¶ 99 at 2; American Imaging Servs., Inc.--Recon., B-250861.2, Jan. 5, 1993, 93-1 CPD ¶ 13 at 2; Parsons Precision Prods. Inc., B-249940, Dec. 22, 1992, 92-2 CPD ¶ 431 at 5-6; Dataproducts New England, Inc., et al., B-246149.3 et al., Feb. 26, 1992, 92-1 CPD ¶ 231 at 14; Diemaco, Inc., B-246065, Oct. 31, 1991, 91-2 CPD ¶ 414 at 2-3 n.2.

¹¹ To the extent that NCS/EML claims that the solicitation should have included such a requirement, such a claim is untimely. 4 C.F.R. § 21.2(a)(1) (protests based on alleged solicitation improprieties which are apparent prior to time set for initial proposals must be filed prior to time set for receipt of initial proposals).

The RFP provided award would be made without discussions and that if one of the proposals received in response to the RFP was found to be overall technically acceptable, the Navy would make award to the offeror with the lowest price. RFP amend. 0002, at 102. The solicitation also reserved the agency's "right to conduct discussions if the [CO] later determin[ed] them to be necessary." *Id.* The agency's initial evaluation uncovered deficiencies and significant weaknesses with both NCS/EML's and Pegasus' non-price proposals. AR, Tab 8, Initial SSEB Report (Aug. 11, 2015), at 3, 7-8, 12-13, 15-16. Additionally, the agency had concerns that the offerors' prices with regard to calculation errors and prices that were too high or too low. *Id.* at 27-31. While the agency rescinded the discussion questions it had for NCS/EML with regard to the safety factor, it did not rescind the significant weakness related to the protester's technical approach or any of the pricing questions related to the calculation errors and the individual CLIN and ELIN pricing. AR, Tab 11, NCS/EML Rescindment Letter, at 1. Under the circumstances presented here, we have no basis to question the agency's decision to establish a competitive range and engage in discussions. See Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339 at 6 (nothing improper with the agency's decision to open discussions when solicitation advised that discussions would be conducted if necessary, the awardee's proposal offered the lowest price, and the agency reasonably concluded that concerns with the awardee's technical proposal could be easily corrected if discussions were opened).

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel