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# Decision

**Matter of:** Sumaria Systems, Inc.

**File:** B-418796

**Date:** September 9, 2020

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## DIGEST

1. Terms of solicitation, issued pursuant to Federal Acquisition Regulation subpart 16.5, that provide for award of a task order to the highest technically rated offeror with a fair and reasonable price are consistent with applicable law and regulation.
  2. Protester's complaints regarding the evaluation criteria to be used to determine the highest technically rated offeror fail to provide a basis for sustaining the protest.
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## DECISION

Sumaria Systems, Inc., of Danvers, Massachusetts, protests the provisions of fair opportunity proposal request (FOPR) No. FA8622-20-R-8244, issued by the Department of the Air Force pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to provide support services for F-15 aircraft. Sumaria asserts that the solicitation's source selection methodology fails to consider price and that the evaluation criteria are otherwise unreasonable.

We deny the protest.

## BACKGROUND

On May 5, 2020, the Air Force issued the FOPR to small businesses holding indefinite-delivery indefinite-quantity (IDIQ) contracts under the General Services Administration's

“One Acquisition Solution for Integrated Services” (OASIS) program.<sup>1</sup> The FOPR contemplates the award of a single cost-plus-fixed-fee task order<sup>2</sup> for a 1-year base period and four 1-year option periods, and seeks proposals to provide services supporting the Air Force’s mission to “design, develop, integrate, test, produce, deploy, modernize, sustain and support” the F-15 aircraft for the United States and for U.S. foreign military sales (FMS) partners worldwide.<sup>3</sup> FOPR at 19. The FOPR identifies various engineering, professional, and administrative support services (EPASS) the contractor will be required to perform;<sup>4</sup> provides labor hour estimates, by labor category, for which offerors must propose direct and indirect rates; and estimates the value of the task order to be \$270 million. The closing date for submission of proposals was June 5, 2020.

The solicitation provides that award will be made to the highest technically rated offeror (HTRO) with a realistic and reasonable price, and establishes two evaluation factors: technical and cost/price. FOPR at 3, 158-59. With regard to evaluation under the technical factor, the solicitation establishes a point-scoring system based on objectively verifiable criteria that measure the extent of an offeror’s prior experience and the quality of its past performance.<sup>5</sup> The solicitation explains that the criteria are intended to

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<sup>1</sup> The procurement is being conducted as a small-business set-aside under “SB Pool 6” of the OASIS contract; Sumaria holds an “SB Pool 6” contract.

<sup>2</sup> The task order will include the following types of contract line item numbers (CLINs): cost-plus-fixed-fee level of effort (CPFF LOE); cost-plus-fixed-fee (CPFF) and cost-reimbursement (CR). Agency Report (AR), Tab 7, FOPR at 5.

<sup>3</sup> The solicitation notes that “[f]uture support to new F-15 FMS partners will also be within scope of this PWS [performance work statement].” *Id.* at 19.

<sup>4</sup> Sumaria acknowledges that the solicitation anticipates a broad range of services, including: “Acquisition Program Management, Acquisition Logistics Management, Financial Management, Engineering, Administration, Configuration and Data Management, Procurement Technician, Security, Test and Evaluation, Capabilities Planning, Operations Management, Operations Research Support, and Studies and Analyses.” Protest at 4.

<sup>5</sup> Among other things, the solicitation provides that points will be assigned based on the: number of personnel employed on the largest work sample; number of incumbent positions transitioned in a 60-day span; number of employees who currently hold a single scope background investigation (SSBI); and number of positions under prior contracts that have provided direct support for various activities, such as research/development/test/evaluation, acquisition, operations/sustainment, cybersecurity, foreign military sales, avionics engineering, and top secret/sensitive compartmented information (TS/SCI) programs. *Id.* at 172-76. Additionally, the evaluation criteria reflect consideration of the number of different contracts under which personnel have been provided. Finally, points will be assigned based on the quality of an offeror’s prior performance as reflected in the adjectival ratings that have been

“maximize the objectivity of determining the HTRO,” noting that an offeror with an extensive and positive past performance history “presents a lower risk of unsuccessful performance,” while an offeror with a more limited or less positive performance history “presents a higher risk of unsuccessful performance.” *Id.* at 167.

With regard to cost/price, offerors will be required to provide direct and indirect rates associated with the various labor categories and levels of effort identified in the solicitation. The FOPR provides that the agency will evaluate cost/price on the basis of reasonableness, realism, and balance, using the techniques identified in FAR 15.404-1. *Id.* at 179-81. In performing the cost/price evaluation, the agency will establish a most probable cost (MPC) for the labor categories identified in the solicitation based on a survey of data that “may include, but is not limited to: General Schedule (GS), Bureau of Labor Statistics (BLS), Economic Research Institute (ERI), Salary.com, in-house subject matter experts, and historical data . . . along with data from the Defense Contract Audit Agency (DCAA).” *Id.* at 180. Proposed cost/prices that are more than 10 percent above or below the MPC may be considered unreasonable or unrealistic, respectively. *Id.* at 180-81. The solicitation also provides for assessment of unbalanced pricing to determine whether “the price of one or more items is significantly overstated or understated” and provides for rejection of a proposal with such pricing. *Id.* at 181.

In responding to the solicitation, each offeror will self-score its proposal against the solicitation’s technical criteria, and must submit a maximum of five prior work samples to substantiate its claimed point scores.<sup>6</sup> Following submission of proposals, the agency will rank the offers based on the point scores claimed, and thereafter evaluate the technical proposals beginning with the proposal with the highest self-claimed point score. If the agency’s evaluation does not validate the claimed technical score of that proposal,<sup>7</sup> the agency will evaluate the proposal with the next-highest claimed score and proceed in that manner until the agency validates the point scores claimed of an HTRO. Upon validation of the HTRO’s technical score, the agency will then evaluate the cost/price of that proposal, as described above. If the HTRO’s cost/price is determined to be unrealistic, unreasonable, or unbalanced, the agency will reject the proposal and begin the evaluation process again with the proposal claiming the next-

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assigned under the contractor performance assessment report system (CPARS). *Id.* at 178-79. The solicitation establishes a maximum point score for each criterion, and provides for a maximum total score of 64,000 points. *Id.* at 220.

<sup>6</sup> The solicitation establishes various requirements regarding the work samples, including that they reflect prior contracts/task orders with the United States government and that at least six months of the prior performance was accomplished during the 5 years preceding issuance of the FOPR. *Id.* at 169-70.

<sup>7</sup> In evaluating proposals, the agency may decrease the claimed score if the evidence provided by the offeror does not support the claimed score. If lowering the score results in another proposal having the highest self-claimed point score, the agency will proceed in the manner described above. *Id.* at 169.

highest technical point score. Upon a determination that an HTRO's claimed point-scores are valid, and determining that the HTRO offers a reasonable, realistic, and balanced cost/price, award will be made to that offeror.

Prior to the June 5, 2020 closing date, Sumaria filed this protest challenging the terms of the solicitation.<sup>8</sup>

## DISCUSSION

Sumaria asserts that the solicitation's source selection methodology is flawed in that it fails to consider the cost/price of all offerors. Sumaria also asserts that various aspects of the solicitation's technical criteria are unreasonable or otherwise flawed.

### Consideration of Cost/Price

First, Sumaria asserts that the solicitation "does not provide for any consideration of price" because it does not contemplate a tradeoff between cost/price and the technical ratings of offerors. Protest at 14. In this context, Sumaria complains that the source selection methodology makes it "impossible" for Sumaria to "offer . . . a lower price in exchange for" a lower technical rating; accordingly, Sumaria asserts that the solicitation fails to provide every potential offeror with a fair opportunity for award. Protest at 1-2, 13-14, 25-28. Sumaria also asserts that the terms of the solicitation are contrary to FAR 16.505(b)(1)(ii)(E), which provides that, in awarding task orders under multiple-award IDIQ contracts, an agency must consider cost/price as "one of the factors in the selection decision." *Id.* at 30.

The agency responds that the solicitation does, in fact, include consideration of cost/price as a factor in the selection decision because the terms of the solicitation establish that, prior to making award, the agency will evaluate the cost/price of any potential awardee to determine whether it is reasonable, realistic, and balanced. With regard to Sumaria's complaint that the solicitation does not permit an offeror to submit a lower price in exchange for a lower technical rating, the agency responds: "[T]hat is precisely the point of [the] HTRO [methodology]." AR, Tab 1, Contracting Officer's Statement at 20. The agency elaborates that it previously used a lowest-priced technically acceptable (LPTA) methodology in competing its EPASS requirements, and that this approach led to submission of minimally acceptable proposals, resulted in an unstable work force, and had a negative impact on contract performance.<sup>9</sup> *Id.* at 10-12.

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<sup>8</sup> Because the value of the task order is expected to exceed \$10 million, this protest is within our jurisdiction to consider protests regarding civilian agency indefinite-delivery, indefinite-quantity multiple-award contracts. See 41 U.S.C. § 4106(f)(1)(B).

<sup>9</sup> The agency also notes that Congress recently placed limitations on a procuring agency's use of the LPTA source selection approach to acquire particular services, including systems engineering, technical assistance, and knowledge-based services.

The agency further notes that: FAR 1.102(d) provides that an agency procurement procedure that is not prohibited by law or regulation is assumed to be permissible; the FAR does not prohibit the HTRO methodology; and FAR subpart 16.5 specifically grants the contracting officer “broad discretion in developing appropriate order placement procedures” and provides that ordering procedures should be tailored to each acquisition. FAR 16.505(b)(ii). Finally, the agency notes that both our Office and the U.S. Court of Federal Claims have concluded that an agency’s use of the HTRO methodology is permissible in negotiated procurements conducted pursuant to the Competition in Contracting Act (CICA) and FAR part 15. See *Sevatec, Inc. et al.*, B-413559.3 *et al.*, Jan. 11, 2017, 2017 CPD ¶ 252 at 6-9; *Octo Consulting Group, Inc. v. United States*, 117 Fed. Cl. 334 (2014).

Based on our review of the record here, including applicable law and the provisions of this solicitation, we reject Sumaria’s assertion that the solicitation’s HTRO methodology is contrary to law or regulation. First, as noted above, FAR 1.102(d) provides that an agency’s chosen procurement procedure that is not prohibited by law or regulation is assumed to be permissible, and FAR subpart 16.5 does not prohibit an HTRO methodology. Further, FAR subpart 16.5 expressly provides a contracting officer broad discretion in establishing the procedures to employ in awarding task orders. Finally, we have stated that, while applicable law and regulation requires an agency to consider cost/price in the selection decision, it does not require an agency to perform a tradeoff between cost/price and the offerors’ non-cost/price qualifications. See *Sevetec, supra*; *Cyberdata Technologies, LLC*, B-417816, Nov. 5, 2019, 2019 CPD ¶ 379 at 8. Specifically, in *Sevetec*, we considered whether CICA’s requirement that solicitations must “include cost or price . . . as an evaluation factor”<sup>10</sup> was met under an HTRO methodology similar to the methodology at issue here. There, we concluded:

[T]he RFP’s source selection methodology--which only considers the prices of the highest-rated offerors, and considers the prices insofar as they are “fair and reasonable”--conforms with the agency’s requirements to consider price under CICA.

*Sevetec, supra*. at 9.

To the extent Sumaria’s protest is based on the premise that there is a meaningful difference between the CICA requirement to include cost/price “as an evaluation factor. . . in the evaluation of proposals,” and the FAR subpart 16.5 requirement (with

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Agency Memorandum of Law at 16 (citing to the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 § 813(c) (2016)).

<sup>10</sup> CICA provides that an agency “shall . . . include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals.” 10 U.S.C. 2305(a)(3)(A)(ii).

regard to orders in excess of \$5.5 million) to disclose the significant factors/subfactors the agency expects to consider, and to include consideration of cost/price “as a factor in the selection decision,” we reject such assertion.<sup>11</sup> 10 U.S.C. § 2305(a)(3)(A)(ii); FAR 16.505(b)(1)(iv)(C); FAR 16.505(b)(1)(ii)(E). Accordingly, Sumaria’s protest challenging this solicitation’s use of the HTRO methodology is denied.

## The Evaluation Criteria

As noted above, the solicitation identifies multiple evaluation criteria, along with associated ranges of point scores that measure the depth of an offeror’s experience and the quality of its prior performance. Offerors are required to self-score their proposals and provide a maximum of 5 work samples that substantiate the scores claimed.

Sumaria complains that the evaluation criteria are “unreasonable” and/or “not reasonably related” to the work contemplated by the solicitation.<sup>12</sup> Protest at 2. The primary thrust of Sumaria’s arguments is that the maximum available point-scores should be lowered so that offerors with less comprehensive experience and/or lower qualifications are able to obtain the maximum scores. In this context, Sumaria expresses dissatisfaction and/or disagreement with virtually every aspect of the evaluation criteria. Among other things, Sumaria complains about the solicitation’s: work sample requirements, including limitations on subcontractors; relative weighting of the evaluation criteria; point-scores for performing contracts and/or providing personnel to support special access programs (SAP) and FMS, TS/SCI, and/or cybersecurity programs; provisions regarding performance at OCONUS (outside the continental United States) locations; and reliance on CPARS ratings. We have considered all of Sumaria’s multiple allegations,<sup>13</sup> and find no basis to sustain its protest.

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<sup>11</sup> In contrast, in establishing blanket purchase agreements under the federal supply schedule, the applicable provisions of FAR subpart 8.4 provide that a procuring agency must consider the “lowest overall cost alternative.” This express regulatory requirement necessitates a “comparative consideration of price” and a “weighing of the value and benefits associated with a vendor’s approach against its associated cost to the government.” *Noble Supply & Logistics, Inc.*, B-418141, Jan. 16, 2020, 2020 CPD ¶ 32 at 7-10. Subpart 16.5 of the FAR does not contain a comparable provision to that of FAR subpart 8.4.

<sup>12</sup> As noted above, in its protest, Sumaria acknowledges that the solicitation anticipates a broad range of services, including: “Acquisition Program Management, Acquisition Logistics Management, Financial Management, Engineering, Administration, Configuration and Data Management, Procurement Technician, Security, Test and Evaluation, Capabilities Planning, Operations Management, Operations Research Support, and Studies and Analyses.” Protest at 4.

<sup>13</sup> Sumaria’s protest includes allegations that are in addition to, or variations of, those listed above or specifically discussed below.

By way of example, in establishing prior experience with regard to supporting FMS programs, the solicitation assigns a specified level of points for each position under prior contracts/task orders (to a maximum of 164 positions) “whose primary purpose is performing FMS support.” FOPR at 175, 203. While Sumaria acknowledges that the FOPR’s level of effort matrix “does identify 164 FMS personnel” that will be required to perform under the task order, Sumaria asserts that permitting an offeror to obtain the maximum point score through demonstrating prior performance at that level “is not a reasonable methodology for assessing or differentiating an offeror’s FMS support experience.” Protest at 23. Sumaria maintains that the maximum point score should be based on a lower level of prior performance, asserting, without explanation or support, that “[a] more reasonable standard would be 50+ personnel.” *Id.*

The agency responds that “[t]he [U.S. Government’s] F-15 FMS portfolio is large and complex” and, under this task order, the contractor will provide maintenance and support for various FMS partners including Saudi Arabia and Kuwait.<sup>14</sup> Contracting Officer’s Statement at 31. The agency further explains that this evaluation criterion reflects the work scope contemplated under the task order and states that “[t]he closer that an offeror can demonstrate [past performance at the level of] our requirement, the more confidence [we have] in its ability.” *Id.*

It is well-established that a contracting agency has discretion to determine its needs and the best means to accommodate them. *E.g., Harris Enters., Inc.*, B-311143, Mar. 27, 2008, 2008 CPD ¶ 60 at 2. When a protester challenges a solicitation provision, our Office will examine the adequacy of the agency’s justification for the provision to ensure that it is rational. *E.g., CompTech-CDO, LLC*, B-409949.2, Jan. 6, 2015, 2015 CPD ¶ 62 at 4. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them, without more, does not establish that the agency’s judgment is unreasonable. *Parcel 49C Limited P’ship*, B-412552 *et al.*, Mar. 23, 2016, 2016 CPD ¶ 95 at 11.

Here, we find nothing unreasonable in the agency’s conclusion that there is value in a potential offeror demonstrating that it has previously performed at the level contemplated by the solicitation. Sumaria’s assertion that demonstration of such performance is unreasonable, and that prior performance at a substantially lower level should be the basis for obtaining a maximum point-score under this criteria, is without merit.

By way of another example, the solicitation provides for assignment of a specified level of points for each prior contract/task order (to a maximum of three contracts) that was performed at an OCONUS location. FOPR at 176, 203. The solicitation explains that

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<sup>14</sup> The agency elaborates that “[t]he F-15 Saudi Arabia FMS LOAs [letters of offer and acceptance] are the largest single system sale in the history of the [U.S. Air Force],” adding that “[t]his fleet of 200+ aircraft needs to be maintained and supported.” Contracting Officer’s Statement at 31.

this evaluation criterion “relates to the Offeror’s ability to fill/retain positions OCONUS, and understand the nuances of supporting people in-country.” *Id.* at 176.

Sumaria complains that “[t]here is no logical connection between the degree of experience filling OCONUS positions and the number of separate contracts under which the offeror gained that experience.” Protest at 23. In this context, Sumaria asserts that “[a]n offeror with three separate work samples is not qualitatively better . . . than an offeror with the same number of OCONUS positions filled . . . under one work sample.” *Id.*

The agency responds that company representatives will be permanently assigned to various overseas locations; notes that “[e]ach country has its own process for issuing work permits”; and explains that the agency “wants to ensure a company is familiar with getting the work permits for its employees.” Contracting Officer’s Statement at 32. In this context, the agency maintains that performance of multiple OCONUS contracts demonstrates more comprehensive experience than performance of a single OCONUS contract. Additionally, the agency explains that “[t]he Department of State places certain security requirements on local and US companies who have US Nationals living in a foreign country.” *Id.* In the context of these requirements, the agency states that it wants a contractor “that is familiar with those security requirements and has shown the ability to get adequate housing for its in-country employees.” *Id.* Accordingly, the agency maintains that providing higher point-scores for an offeror that has performed more than one contract at an OCONUS location is reasonable.

As noted above, a contracting agency has discretion to determine its needs and the best means to accommodate them, and our Office will examine the agency’s justification for a challenged solicitation provision to ensure that the justification is rational. *Harris Enters., Inc., supra; CompTech-CDO, LLC, supra.* Based on the record here, including the explanation contained within the solicitation itself as well as the agency’s response to Sumaria’s protest, we find nothing unreasonable in assessing a higher point-score for an offeror that has demonstrated experience performing at more than one OCONUS location under multiple contracts. Sumaria’s complaints to the contrary are without merit.

As noted above, Sumaria’s protest challenges virtually every aspect of the solicitation’s evaluation scheme for identifying the HTRO and determining that the cost/price of a potential awardee is reasonable, realistic, and balanced, asserting the existence of various alleged flaws. We have reviewed all of Sumaria’s allegations and find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel