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Decision

Matter of: Mission Essential, LLC

File: B-418767

Date: August 31, 2020

Craig A. Holman, Esq., and Michael E. Samuels, Esq., Arnold & Porter Kaye Scholer, LLP, for the protester.

Major Abraham L. Young, Lieutenant Colonel Stephen M. Hernandez, Harry M. Parent, Esq., and Andrew J. Smith, Esq., Department of the Army, 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 that agency acted unreasonably by not addressing the mistake in protester's cost/price proposal through a cost realism "most probable cost" adjustment is denied where agency reasonably determined, as preliminary matter, the proposal as submitted was noncompliant and not subject to a substantive evaluation review.
 2. Protest that agency abused its discretion by not engaging in clarifications before rejecting the protester's noncompliant proposal is denied where the agency was under no obligation to engage in clarifications regarding an aspect of the proposal that concerned its eligibility for award.
 3. Protest that agency failed to reasonably determine that rejection of protester's noncompliant task order proposal was "in the government's interest," as required by the solicitation, is denied where the record reflects the reasonable exercise of agency's discretion.
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DECISION

Mission Essential, LLC, of Herndon, Virginia, protests the removal of its proposal from the competition under request for task order proposals (RTOP) No. W911W4-18-R-AFR3, issued by the Department of the Army for linguist services. Mission Essential argues that, for various reasons, it was improper for the Army to reject its proposal based on a clerical error.

We deny the protest.

BACKGROUND

The Army issued the RTOP on January 23, 2020, under the Defense Language Interpretation and Translation Enterprise II (DLITE II) indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.¹ Agency Report (AR), Tab 4, RTOP amend. 1 at 1-2, 151; Contracting Officer's Statement (COS), June 24, 2020, at 2. The solicitation contemplated the award, without discussions, of a cost-plus-fixed-fee task order for a 1-year base period with four 1-year options.² AR, Tab 4, RTOP amend. 1 at 3, 151. In general terms, the RTOP required the contractor to furnish all personnel, equipment, tools, materials, and supervision necessary to provide foreign language services in support of United States Africa Command operations. RTOP amend. 1, Performance Work Statement at 32.

The RTOP contained a government furnished pricing model (GFPM) which specified the linguist labor categories (53), number of full-time equivalent positions (159), and number of man-hours (827,539 annually) that offerors were to propose. AR, Tab 4b, RTOP amend. 1, GFPM (Base Period). The GFPM also included minimum direct labor rates--referred to as "floor rates"--for each linguist labor category. *Id.* The GFPM instructed offerors to provide a total taxable compensation rate that "shall not be less than the Government[-]provided 'Floor' Rate." *Id.* at GFPM (Instructions). Further, the RTOP stated that "[a]ny Offeror proposed rates below the Government 'Floor Rates' will be ineligible for award as those proposals below the threshold or floor shall be deemed unrealistic." RTOP amend. 1 at 140.

The solicitation provided for a proposal compliance review. *Id.* at 151. Specifically, "[a]fter receipt of proposals, but prior to the evaluation process, the Government will perform a compliance review of the offeror's proposal to determine the extent of compliance to the solicitation instructions, and whether the proposal meets any of the conditions listed in Section M.4, Rejection of Offerors." *Id.* Further, the RTOP explicitly notified offerors, as part of the compliance review, that the agency "may reject any Offeror's proposal[] with proposed labor rates below the Government established 'Floor Rates'." *Id.* at 153.

Task order award was to be made on a best-value tradeoff basis, based on two evaluation factors in descending order of importance: technical and cost/price. *Id.*

¹ The RTOP was amended three times. Unless stated otherwise, all citations are to the final version of the solicitation, using the consecutive numbering of the pages in the Adobe PDF format of the documents provided by the agency.

² Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors" who submit "quotations" and are "issued" task orders, the record and the parties' briefings primarily use the terms "offerors," "proposals," and "award." For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for the award of a task order.

at 153. The technical factor consisted of two subfactors in ascending order of importance: transition plan, and management and staffing approach. *Id.* The technical factor was significantly more important than the cost/price factor. *Id.*

The Army subsequently issued several amendments to the initial solicitation. Relevant to the protest here, RTOP amendment 2 updated the GFPM and made upward adjustments to the floor rates for 43 of 53 labor categories. AR, Tab 5a, RTOP amend. 2, GFPM (Base Period). For example, for the Category II/French linguist labor category, the floor rate changed from \$18.05 per hour to \$18.19 per hour. AR, Tab 4b, RTOP amend. 1, GFPM (Base Period); Tab 5a, RTOP amend. 2, GFPM (Base Period).

Eight DLITE II contract holders, including Mission Essential, submitted proposals by the March 19 closing date. Mission Essential's proposal stated the offeror planned to meet or exceed the floor rates for all linguist labor categories. AR, Tab 7b, Mission Essential Proposal, Vol. II, Cost/Price Proposal at 8 ("Mission Essential proposes rates that meet or exceed the Government provided Floor Rates"), at 14 (same). However, Mission Essential's proposal used certain GFPM floor rates provided in the initial solicitation rather than the amended floor rates.³ See AR, Tab 7d, Mission Essential Proposal, GFPM (Base Period).

When the Army performed its compliance review of proposal submissions, it found that Mission Essential had proposed direct labor rates for four labor categories that were below the government-established floor rates.⁴ AR, Tab 8, Mission Essential Compliance Checklist (Vol. II Pricing Evaluator Review). On May 13, the Army notified Mission Essential that its proposal was found to be noncompliant with the solicitation's floor rates and was no longer considered eligible for award. AR, Tab 9, Mission Essential Notice of Non-Compliance at 1-2. This protest followed.⁵

³ By contrast, Mission Essential's proposal did reflect other changes that were made applicable by RTOP amendment 2, e.g., that the Category I/Portuguese linguist labor category had no associated floor rate. AR, Tab 7d, Mission Essential Proposal, GFPM (Base Period).

⁴ While RTOP amendment 2 made upward adjustments to the government floor rates for 43 labor categories, because Mission Essential often proposed to exceed the floor rates, there were but 4 instances where the offeror's proposed labor rates were below the amended floor rates. AR, Tab 8, Mission Essential Compliance Checklist (Vol. II Pricing Evaluator Review); Protest at 13.

⁵ Mission Essential represents that the value of the task order here is approximately \$175 million, which the Army does not dispute. Protest at 3; see Memorandum of Law (MOL) *passim*. Because the value of the anticipated task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

Mission Essential, while not disputing that it proposed labor rates for four labor categories below the amended floor rates, raises three issues regarding the Army's rejection of its proposal. The protester first alleges the agency acted unreasonably by not addressing the apparent mistake in Mission Essential's proposal through the cost realism evaluation envisioned by the solicitation. Mission Essential also contends that the Army abused its discretion by excluding the protester's proposal without considering the materiality of the mistake or engaging in clarifications. Lastly, the protester asserts the Army improperly rejected Mission Essential's proposal without contemporaneously determining whether such action was "in the Government's interest," as required by the solicitation.

As a preliminary matter, we note that the procurement here was conducted using specific procedures which govern our review of this protest. The RTOP established that "[t]he proposal evaluation and discussion procedures in FAR Subpart 15.3, Source Selection, DO NOT APPLY to this acquisition. The Government will conduct evaluations using a 'Best Value' approach and will follow FAR 16.505 ('Ordering')." RTOP amend. 1 at 151. The solicitation, however, also incorporated by reference FAR provision 52.215-1, Instructions to Offerors--Competitive Acquisition, and stated that various parts of the evaluation would be conducted in accordance with FAR provision 52.215-1. *Id.* at 133, 152, 157.

The regulations concerning evaluation and source selection under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR subpart 16.5. *Chameleon Integrated Servs.*, B-407018.3, B-407018.4, Feb. 15, 2013, 2013 CPD ¶ 61 at 4; *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 8. Instead, it is generally the ordering provisions of FAR 16.505 that govern task and delivery order competitions. *M.A. Mortenson Co.*, *supra*. Here, despite the RTOP's narrative statement that the procedures of FAR subpart 15.3 did not apply, the solicitation also expressly included FAR provision 52.215-1 and stated that various parts of the evaluation would be conducted in accordance with this provision. Where, as here, the evaluation record expressly provides for the agency's voluntary election of specific FAR part 15 provisions (e.g., FAR provision 52.215-1) to a FAR part 16 procurement, we will also evaluate the agency's adherence to those provisions in assessing the evaluation.⁶ *Imagine One Tech. & Mgmt., Ltd.*, B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7; see *Allied Tech. Grp., Inc.*, B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 5 n.8 (applying similar analysis in Federal Supply Schedule competition).

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best

⁶ We also note the Army does not dispute the incorporation of FAR provision 52.215-1 to the RTOP or its applicability to the evaluation here. *MOL passim*.

method of accommodating them. *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9; *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 15. In reviewing protests challenging the evaluation of an offeror's proposal, or, as here, the rejection of a proposal based on the agency's evaluation, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation's evaluation criteria and applicable procurement statutes and regulations. See *Safeguard Base Opns., LLC*, B-415588.6, B-415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 2; *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. It is an offeror's responsibility to submit a well-written proposal that clearly demonstrates compliance with the solicitation, and where a proposal fails to do so, the offeror runs the risk that its proposal will be rejected. *CACI Techs., Inc.*, B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Engility Corp.*, *supra* at 16.

As discussed below, even applying those requirements of FAR part 15 made applicable by means of FAR provision 52.215-1 to the evaluation of proposals here, the protester has not demonstrated that the agency's actions were unreasonable or otherwise provide a basis on which to sustain the protest.

Cost Realism Adjustment

Mission Essential asserts that the agency acted unreasonably by not addressing the apparent mistake in the company's proposal through a cost realism adjustment. Protest at 13-14. The protester points to the fact that the solicitation both contemplated the award of a cost reimbursement-type task order and provided for a cost realism analysis in accordance with FAR 15.404-1 as part of the evaluation of proposals. *Id.* at 14. Mission Essential also argues that the Army was required to remedy the mistake in the offeror's proposed labor rates in the same manner that the agency would for any aspect of an offeror's proposed costs that were deemed unrealistic--making a "most probable cost" adjustment, rather than eliminating the proposal from the competition altogether based on unrealistic costs.⁷ *Id.* at 14-16.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 16.505(b)(3); 15.305(a)(1); *Engility Corp.*, *supra* at 18; *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1), 16.505(b)(3); *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. The end product of a cost realism analysis is the total estimated

⁷ The protester also asserts that the difference here was "pennies" per hour, and amounted to about \$76,000 on a task order valued at approximately \$175 million. Protest at 2-3, 15.

cost (commonly referred to as “most probable cost”) that the agency realistically expects to pay for the offeror’s proposed effort, and it is the estimated cost, and not the offeror’s proposed cost, that must be the basis of the agency’s source selection determination. *Innovative Test Asset Sols., LLC, supra*, at 14 n.19.

We find Mission Essential’s reliance upon a cost realism adjustment to remedy the mistake in its proposed labor rates misplaced. As set forth above, the RTOP expressly stated that the agency would perform a proposal compliance review before substantively evaluating proposals. RTOP amend. 1 at 151. Here, the cost realism evaluation to which the protester refers applied only to those proposals that were found, as a prerequisite, compliant with the RTOP’s instructions. *Id.* (“After receipt of proposals, but prior to the evaluation process, the Government will perform a compliance review of the offeror’s proposal”) As Mission Essential’s proposal was found to be noncompliant with the RTOP’s floor rates, and rejected for that reason, there was simply no requirement that the agency substantively evaluate its proposal, including conducting a cost realism evaluation.

In any event, we agree with the agency that Mission Essential’s failure to comply with the required floor rates could “not be re[s]uscitated” by a cost realism adjustment to the offeror’s proposed cost. MOL at 11. The RTOP expressly provided that any offeror that proposed labor rates below the floor rates “will be ineligible for award.” RTOP amend. 1 at 140. Thus, while a cost realism adjustment might have ensured that Mission Essential’s evaluated cost was realistic, it was only through the submission of a revised proposal, which included compliant labor rates, that Mission Essential could be eligible for task order award here.

Clarifications

Mission Essential next alleges the Army acted improperly by not engaging in clarifications. The protester does not dispute that its proposed labor rates were below the RTOP’s required floor rates. Protest at 12-13. Rather, Mission Essential contends its error was an unintentional one, and that this minor, clerical mistake could be remedied through clarifications. Comments at 13, 17. The protester also argues that the Army’s failure to engage in such clarifications constituted an abuse of discretion. *Id.* at 12-15. The Army contends the mistake in Mission Essential’s cost/price proposal could only be remedied by conducting discussions rather than clarifications, as the failure to propose compliant labor rates affected the protester’s eligibility for award. MOL at 17-18. The Army also asserts that even assuming the mistake here could properly be the subject of clarifications, the agency’s decision not to engage in clarifications was not improper. *Id.* at 15-17.

Contrary to Mission Essential’s view, its noncompliant labor rates were not a minor or clerical error, but a deficiency. See FAR 15.001 (defining deficiency as a material failure to meet a government requirement). The RTOP expressly established that an offeror that proposed direct labor rates below the floor rates was ineligible for award. RTOP amend. 1 at 140. A proposal that fails to conform to a material term of the

solicitation is unacceptable and may not form the basis for award. See *Alltech Eng'g Corp.*, B-414002.2, Feb. 6, 2017, 2017 CPD ¶ 49 at 5; *National Shower Express, Inc.; Rickaby Fire Support*, B-293970, B 293970.2, July 15, 2004, 2004 CPD ¶ 140 at 4-5. The fact that Mission Essential may have intended to propose labor rates that met or exceeded the floor rates does not negate the fact that what it actually proposed was noncompliant with the solicitation instructions and could not, as submitted, form the basis for award.⁸

Moreover, we agree with the Army that Mission Essential's mistake, given its nature, could not have been addressed through clarifications. The FAR describes a spectrum of exchanges that may take place between a contracting agency and an offeror. See FAR 15.306. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR 15.306(a); *Satellite Servs., Inc.*, B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Section 15.306(b)(2) of the FAR specifically provides that exchanges under this section "shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal." See also FAR 15.306(b)(3) (describing communications as exchanges leading to establishment of the competitive range but notes that "communications shall not provide an opportunity for the offeror to revise its proposal").

Here, to become eligible for award, Mission Essential's proposal would have required the submission of a revised GFPM which included labor rates not below the floor rates for 4 labor categories and a total 10 linguist positions, as required by the solicitation.⁹ Providing an offeror the opportunity to revise its proposal and cure a deficiency would

⁸ We also find Mission Essential's assertion that the mistake was a "*de minimis*" one, as evidenced by the size of the amount involved, to be misplaced. The protester's quantitative focus ignores the fact that, regardless of amount, by the terms of the solicitation, the proposal as submitted was ineligible for award. RTOP amend. 1 at 140, 151, 153.

⁹ The protester argues several times that the agency should have sought clarifications for this "minor" error, because Mission Essential's intent was clear from its proposal, *i.e.*, "[t]o leave zero doubt about its intended approach, Mission Essential repeatedly states that its proposed rates meet or exceed the Government Floor Rates." Protest at 2, 18; Comments at 17-18. This argument, however, misses the mark. Even if the Army had engaged in clarifications with the protester and agreed that it was an unintentional error, the Army could not, of its own accord, simply replace the labor rates submitted by Mission Essential in the GFPM. Mission Essential would have needed to submit a revised proposal with rates that met (or, as in some instances in Mission Essential's proposal, exceeded) the government provided floor rates--something that could not have been accomplished through clarifications.

constitute discussions, not clarifications, because that would require the revision of information that was a condition-precedent to being eligible for award. FAR 15.306(d). Further, agencies are not required to conduct discussions when, as here, the solicitation expressly advises offerors of the agency's intent to make task order award on the basis of initial proposals. *Id.* Thus, while the protester views its error here to be minor or clerical, correction of the error would have required the agency to conduct discussions with Mission Essential (and other eligible offerors).¹⁰ *Alltech Eng'g Corp.*, *supra* at 6.

In any event, even if we were to agree that Mission Essential's mistake was a minor or clerical error that could have been corrected through clarifications--and we do not--an agency is permitted, but is not required, to engage in clarifications. FAR 15.306(a)(1) ("Clarifications are limited exchanges between the Government and offerors, that *may* occur when award without discussions is contemplated.") (emphasis added); FAR 15.306(a)(2) ("If award will be made without conducting discussions, offerors *may* be given the opportunity to clarify certain aspects of proposals . . . or to resolve minor or clerical errors") (emphasis added). The FAR expresses no limitations on an agency's discretion here, nor does it provide any suggestive guidance regarding when an agency should engage in clarifications. *Contra* FAR 15.305(a)(2)(iii) ("The [past performance] evaluation should take into account past performance information regarding . . . subcontractors that will perform major or critical aspects of the requirement . . ."); *Singleton Enters.*, B-298576, Oct. 30, 2006, 2006 CPD ¶ 157 at 3. In sum, agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no right to clarifications regarding their proposals.¹¹ *Alltech Eng'g Corp.*, *supra*; *A. G. Cullen Constr., Inc.*, B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6.

Therefore, Mission Essential's contention that the Army was essentially obligated to engage in clarifications regarding its noncompliant labor rates here, and to permit the protester to submit revised information, lacks merit. *See, e.g., Alltech Eng'g Corp.*, *supra*; *Alares, LLC*, B-407124, Nov. 7, 2012, 2012 CPD ¶ 316 at 4-5.

¹⁰ Mission Essential does not argue that the Army was required to conduct discussions.

¹¹ Mission Essential also cites to decisions of the United States Court of Federal Claims (COFC) in *Level 3 Commc'ns, LLC v. U.S.*, 129 Fed. Cl. 487 (2016), *BCPeabody Constr. Servs., Inc. v. U.S.*, 112 Fed. Cl. 502 (2013), and *Griffy's Landscape Maint. LLC v. U.S.*, 46 Fed. Cl. 257 (2000), in support of its assertion that the agency abused its discretion by not engaging in clarifications. As a preliminary matter, the COFC's decisions do not govern here. In any event, the COFC's aforementioned decisions applied to errors that were clerical or minor in nature, and/or correctable by means of clarifications, which, as explained above, is not the situation here. Lastly, unlike the COFC's review pursuant to the Administrative Procedure Act, 5 U.S.C. § 706, our review concerns whether an agency's actions or inactions in the award of a contract or task order violate applicable procurement statutes or regulations. 31 U.S.C. § 3552(a) ("A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter"). We find no such violation here.

Rejection of Mission Essential's Proposal

Lastly, Mission Essential contends the Army improperly rejected the protester's proposal without first determining whether such action was "in the Government's interest," as required by the solicitation. Comments at 12, *citing* RTOP amend. 1 at 152. The protester maintains that the rejection of its proposal, even if noncompliant, required a reasonable exercise of agency discretion, which did not occur here. *Id.* at 25. Mission Essential also maintains nothing in the contemporaneous evaluation record supports the agency's action, and that it was only after the protest filing that the Army created a rationale for its exclusion of the Mission Essential proposal. *Id.* at 8-11.

As set forth above, the RTOP provided for a proposal compliance review "to determine the extent of compliance to the solicitation instructions, and whether the proposal meets any of the [noncompliant] conditions listed in Section M.4, Rejection of Offerors." RTOP amend. 1 at 151. Section M.4.1 of the solicitation stated, in relevant part, that "[i]n accordance with FAR 52.215-1, contained in this RTOP, the Government may reject any or all proposals if such action is in the Government's interest." *Id.* at 152. The solicitation proceeded to list (in sections M.4.1.1 to M.4.1.7) several examples of what could cause the rejection of a proposal. As discussed earlier, one of those enumerated examples (M.4.1.7) expressly advised offerors of the following: "The Government may reject any Offeror's proposal[] with proposed labor rates below the Government established 'Floor Rates'." *Id.* at 153.

The contemporaneous record contains no information showing how, or if, the Army determined the rejection of Mission Essential's noncompliant proposal was in the government's interest. In fact, the record suggests the opposite; that rejection of the proposal was automatic based on noncompliance with the GFPM's floor rates. See AR, Tab 8, Mission Essential Compliance Review Checklist; AR, Tab 9, Mission Essential Rejection Notice. In his initial statement in response to the protest, the contracting officer explained that, as part of the compliance review process, proposals were "spot checked for the specific items outlined in the Compliance Checklist, including the minimum Floor Rate requirement." COS, June 2, 2020, at 1. The contracting officer also stated: "Any offeror not adhering to [the Section L submission] requirements [was] removed from [the] competition, as outlined in Section M, specifically Section M.4, Rejection of Offerors." *Id.*

However, in his second statement to our Office, the contracting officer stated:

I ultimately determined that it was in the best interest of the Army to reject the proposals that failed to comply with the established [f]loor [r]ates. I made this decision after considering whether to take some form of remedial action to allow the noncompliant offerors the opportunity to correct their deficient proposals. As none of the offerors requested exceptions to RTOP requirements, I understood the failures of these three offerors with respect to the floor rates to likely be the result of mistakes. In deciding whether to reject these proposals, I considered the effect on

competition, the fair treatment of offerors that had put in the effort and expense to comply with the RTOP requirements, as well as the equal treatment of offerors that had failed to meet the RTOP floor rate requirement.

COS, June 24, 2020, at 4.

Given the lack of contemporaneous documents regarding the contracting officer's rejection of Mission Essential's proposal, we conducted a hearing to obtain the contracting officer's testimony. At the hearing, the contracting officer first testified that he understood the RTOP provided him with "broad [] discretion" to exclude offerors that failed the compliance review. Hearing Transcript (Tr.) at 14. The contracting officer also testified regarding the extent to which Mission Essential failed to meet the RTOP requirements, as he reviewed the proposal compliance review results. *Id.* at 16-17.

The contracting officer then detailed the matters he did, and did not, take into account when deciding to reject Mission Essential's noncompliant proposal. First, in regards to the compliance review process, the contracting officer expressed: "This was the first wicket to get through was the compliance review. And the fact that the offeror was not able to adhere to submission requirements was the first gate that I had available to offload offerors." Tr. at 72; see Agency Post-Hearing Comments at 4-5. The contracting officer stated that his reasoning included, but was not limited to, the items mentioned in his June 24, 2020 statement (*i.e.*, the effect on competition, the fair treatment of offerors that had complied with the RTOP instructions, the equal treatment of offerors that had also failed to comply). Tr. at 85-87. The contracting officer testified that he also considered whether exclusion of noncompliant proposals would affect the ability to obtain successful task order performance:

But we've got companies in here that we know can perform the effort because the government has previously went through an extensive source selection to award on these ID/IQ contracts so we could just issue quick task orders off these contracts, instead of doing a FAR 15-based source selection for every single DLITE action.

Id. at 72-73.

The contracting officer testified that he also considered the type of remedial action that would be required to address the mistake here. Tr. at 20, 96. Specifically, the contracting officer stated he was of the opinion that the mistake in the proposed labor rates was not correctable by means of clarifications.¹² *Id.* at 21-23. The contracting officer explained that because compliance with the floor rates was an expressly-stated award eligibility criterion with which Mission Essential's proposal failed to comply, the

¹² The contracting officer mentioned, as an example, an offeror's inclusion of two GFPMS in its proposal as a clerical error which he thought could be remedied by clarifications. Tr. at 20-21.

error would require discussions in order to remedy. *Id.* at 23. The contracting officer also stated he considered that requiring discussions with one offeror would require similar discussions with other offerors, and that such discussions could not occur until after the agency had completed its initial evaluation of proposals. *Id.* at 24-25. The contracting officer also stated he considered the time this would add to the source selection process, when the agency had contemplated making award in order to provide sufficient time for any contractor transition, and the fact that the solicitation had stated the agency planned on making award without discussions. *Id.* at 17-18, 23. The contracting officer concluded that he viewed it in the government's interest not to retain, but to reject, Mission Essential's noncompliant proposal. *Id.* at 27-30.

A contracting officer is accorded broad discretion when determining what is in the best interest of the government, and we will not question the contracting officer's decision unless it is shown to be unreasonable or contrary to applicable regulations. *Nutriom, LLC*, B-402511, May 11, 2010, 2010 CPD ¶ 113 at 5; see *Booz Allen Hamilton, Inc.*, B-418449, May 18, 2020, 2020 CPD ¶ 178 at 4 n.5 (agencies enjoy broad discretion in selecting the evaluation factors that will best serve the government's interests).

Based on this record, we find no basis on which to sustain the protest. The record reflects that the contracting officer recognized the requirement, and the discretion, to determine whether rejection of a noncompliant proposal was in the government's interest. Tr. at 14. The record also reflects the various criteria the contracting officer reasonably took into account when making his determination. For example, the contracting officer reasonably considered: the effect on competition; the fact that he already possessed an IDIQ pool of qualified contractors that would be able to compete and successfully perform the work here; the type of remedial action required to rectify Mission Essential's noncompliant proposal; the amount of time and impact to the procurement that such remedial action would take; and the fair treatment of similarly-situated noncompliant offerors. *Id.* at 17-30. Ultimately, the contracting officer reasonably concluded that it was not in the government's interest to retain Mission Essential's noncompliant proposal. *Id.* at 27.

We also find that Mission Essential's disagreement with the agency's action here is essentially based on the erroneous premise that the mistake could be remedied through clarifications. See Comments at 20 ("The Army easily could have confirmed [through clarifications] that Mission Essential intended to honor the floor [rate]s as its proposal repeatedly states") (emphasis omitted); Protester Post-Hearing Comments *passim*. However, the record reflects that the contracting officer had a reasonable belief that the mistake in Mission Essential's proposal could not be fixed through clarifications, and required discussions, because it was an aspect of the offeror's proposal that concerned award eligibility.¹³ As stated by the contracting officer, confirming through clarifications that Mission Essential intended to comply with all floor rates would not alter the fact that its proposal would have to be revised in order to be eligible for award. Tr. at 21. In

¹³ As detailed above, we likewise view the mistake here as one that is not subject to correction through clarifications.

sum, having reasonably concluded that discussions would be required here, the contracting officer then reasonably exercised his discretion when concluding to reject Mission Essential's noncompliant proposal.

Lastly, Mission Essential argues that the contracting officer's June 24, 2020, statement, and hearing testimony, are *post-hoc* rationalizations to which our Office should afford little or any weight. Comments at 8-11, Protester Post-Hearing Comments at 6, 10, 13. First, there is nothing in the RTOP or the FAR requiring a contracting officer to contemporaneously document his rationale for a decision that not opening discussions is in the government's interest. See RTOP amend. 1 at 140, FAR 52-215-1; *contra* FAR 15.306(a)(3) (requiring in instances where solicitation states that award may be made without discussions and government later determines that discussions are necessary, "the rationale for doing so shall be documented in the contract file").

Next, because the contracting officer was not required to document such rationale--and did not do so here--any requested elaboration or explanation, would necessarily have to be post-protest in nature. Finally, we find the contracting officer's testimony to be credible regarding what he did and did not consider, as well as the fact that this consideration occurred prior to the rejection of Mission Essential's proposal. We, therefore, view the contracting officer's June 24, 2020, statement and testimony to be a post-protest explanation of contemporaneous conclusions and not a *post-hoc* rationalization, as the protester suggests. Compare *NWT, Inc.; PharmChem Labs., Inc.*, B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158, with *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91.

The protest is denied.

Thomas H. Armstrong
General Counsel