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# Decision

**Matter of:** Pacific Shipyards International, LLC

**File:** B-420587.3; B-420587.4

**Date:** July 25, 2022

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Anthony H. Anikeeff, Esq., and Yongjoo Kwon, Esq., Williams Mullen, for the protester. Mark G. Jackson, Esq., and Stowell B. Holcomb, Esq., Jackson Holcomb LLP, for Vigor Marine, LLC, the intervenor.

Tami Yamada, Esq., Department of the Navy, for the agency.

David A. Edelstein, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that agency unreasonably permitted offerors to submit revised price proposals when taking corrective action in response to a prior protest is denied where the protester has not demonstrated that the agency's corrective action was unreasonable.

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## DECISION

Pacific Shipyards International, LLC, of Honolulu, Hawaii, protests the corrective action taken by the Department of the Navy, Naval Sea Systems Command, in response to a prior protest under fair opportunity proposal request (FOPR) No. N32253-22-F-0025, issued for ship repair, maintenance, and upgrading services. The protester contends that the agency has unreasonably permitted offerors to revise their price proposals.

We deny the protest.

## BACKGROUND

On September 2, 2021, the Navy issued the FOPR to holders of a multiple award, indefinite-delivery, indefinite-quantity (IDIQ) contract for repair, maintenance, and modernization of surface ships located in Pearl Harbor, Hawaii. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. The FOPR sought to issue a delivery order for work to be performed on the USS Michael Murphy, referred to as a docking selected restricted availability. *Id.* See Agency Report (AR), Tab 2, FOPR at 1.

The FOPR provided that award would be made on a best-value tradeoff basis, considering price, resource capability and schedule, and past performance. FOPR at 65-66. The non-price factors, when combined, were approximately equal in importance to price. *Id.* at 66.

The agency received proposals from Pacific and Vigor Marine, LLC, and issued a delivery order to Pacific on February 18, 2022. COS/MOL at 7. Vigor requested a debriefing. *Id.* See AR, Tab 4, Vigor Debriefing. As part of Vigor's debriefing, and in accordance with Federal Acquisition Regulation section 15.506(d)(2), the agency disclosed Pacific's total evaluated price to Vigor, including Pacific's price for base work items, its price for additional "growth" work items, and its price for option work items. See AR, Tab 5, Responses to Vigor Enhanced Debriefing Questions at 2.

On March 9, Vigor protested the award to Pacific with our Office. Prior Protest Pleading, B-420587, March 9, 2022. Vigor argued that the agency had unreasonably evaluated Pacific under the past performance factor. *Id.* at 4-6. In a supplemental protest, Vigor further argued that the agency had improperly evaluated both offerors under the resource capability and schedule factor, and that the agency's best-value tradeoff was unreasonable. Prior Supp. Protest, B-420587.2, March 14, 2022 at 3-11.

In response to Vigor's protest, the agency informed our Office that it would take corrective action by "reexamin[ing] its evaluation of the non-price factors based on the allegations raised by the protester and [by making] a new award decision." Revised Notice of Corrective Action, B-420587, B-420587.2, March 28, 2022 at 1. The agency also "reserve[d] the right to take any other corrective action as deemed appropriate including, but not limited to, conducting exchanges." *Id.*

Pacific objected to the agency's proposed corrective action. Obj. to Notice of Corrective Action, B-420587, B-420587.2, Mar. 24, 2022 at 1-2. Specifically, Pacific objected to the agency's reservation of rights, and argued that the scope of the corrective action should be limited to the reevaluation of proposals with respect to the specific, non-price issues raised in Vigor's protest. *Id.* The protester objected to any attempt by the agency to permit price revisions. *Id.*

Because the agency's corrective action rendered Vigor's protest academic, we dismissed the protest. *Vigor Marine, LLC*, B-420587, B-420587.2, March 31, 2022 (unpublished decision). With respect to Pacific's objection, we stated that we would not direct the agency to limit the scope of its corrective action. *Id.* at 1 n. 1. We explained that if Pacific believed the agency's corrective action to be unreasonable, Pacific could file a new protest consistent with our Office's Bid Protest Regulations. *Id.*

As part of its corrective action, the agency issued clarification exchanges to both offerors on March 31, 2022. COS/MOL at 8; see AR, Tabs 9a and 9b, Clarification Exchanges. After reviewing the offerors' proposals and their responses to the clarification exchanges, the agency determined that it could not properly evaluate the proposals in accordance with the FOPR. COS/MOL at 8. In this regard, the Navy determined that errors, inconsistencies, and ambiguities in the FOPR were adversely

impacting offerors' ability to respond to the FOPR requirements. *Id.*; AR, Tab 10, Decl. of Contracting Officer at 1-2. On April 20, the agency issued amendment 14 to the FOPR, correcting certain identified issues and revising requirements to more accurately reflect the agency's needs. COS/MOL at 9; AR, Tab 10, Decl. of Contracting Officer at 2-6. See AR, Tab 11, FOPR amend. 14.

The agency identifies thirteen changes that amendment 14 made to the FOPR. COS/MOL at 9-12. Among these changes, amendment 14 incorporated an update to the Industrial Ship Safety Manual for Fire Prevention and Response. AR, Tab 11, FOPR amend. 14 at 20. It also imposed a new requirement for the contractor to provide a representative to participate in Fire Safety Council meetings. *Id.* at 32.

Amendment 14 also revised sections L (instructions, conditions and notice to offerors) and M (evaluation factors for award) of the FOPR. *Id.* at 53-69. Most significantly, the amended FOPR directed offerors to submit a workforce plan that addressed all "currently ongoing and newly-proposed (prospective) projects anywhere in the world." *Id.* at 58-60. This was in contrast to the prior version of the FOPR, which requested workforce information relating to each offerors' "shipyard." FOPR at 58.<sup>1</sup> The agency would use these workforce plans to assess the offeror's ability to provide sufficient staffing for the delivery order, under the resource capability and schedule factor. AR, Tab 11, FOPR amend. 14 at 58. The agency explains that it made this change in order to evaluate offerors' proposed staffing for this delivery order against their total resources and schedule, and to remove any potential ambiguity. COS/MOL at 9-11.

The contracting officer determined that amendment 14 could impact offerors' original price and non-price proposals. AR, Tab 10, Decl. of Contracting Officer at 6. The contracting officer further determined that--because the period of performance of the delivery order had not changed despite a later award--offerors might want to incorporate acceleration costs into their price proposals. *Id.* The agency explains that these factors led it to request revised price and non-price proposals from offerors in amendment 14. *Id.* Revised proposals were due on May 3. AR, Tab 11, FOPR amend. 14 at 1.

On April 30, Pacific filed its protest with our Office, challenging the agency's decision to request revised price proposals. On May 3, both Vigor and Pacific submitted revised proposals in response to amendment 14. AR, Tab 10, Decl. of Contracting Officer at 6.

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<sup>1</sup> Vigor had interpreted this provision to refer only to each offeror's shipyard located in Pearl Harbor. See AR, Tab 14a, Vigor Agency Protest at 1-7. When the agency stated otherwise, *i.e.*, that the requirement included worldwide staffing, Vigor filed an agency-level protest arguing that this modified the terms of the FOPR, such that the agency was required to permit offerors to revise their proposals. AR, Tab 14a, Vigor Agency Protest at 1-7. The agency dismissed this protest as moot after it permitted offerors to submit revised proposals. AR, Tab 14b, Response to Vigor Agency Protest at 1.

Both of these revised proposals included price increases and decreases across various work items. *Id.*

During the course of evaluating revised proposals, the contracting officer determined that further exchanges were necessary. *Id.* On May 12, the agency sent exchange letters to both Vigor and Pacific, requesting revised proposals no later than 8:00 a.m. Hawaii Time on May 17. AR, Tab 13a and 13b, Exchange Letters. On May 17, at 4:09 p.m. Eastern Time, Pacific filed a supplemental protest with our Office challenging this request for revised proposals.<sup>2</sup>

## DISCUSSION

Pacific argues that the agency's decision to permit unrestricted pricing revisions constituted an abuse of discretion because such revisions exceeded what was reasonably necessary to remedy the agency's concerns. Protest at 6; Supp. Protest at 6-8. Pacific asserts that it was prejudiced because Vigor was provided the opportunity to revise its price after the agency had disclosed Pacific's price to Vigor. *Id.* at 6-7. We deny the protest because Pacific has not demonstrated that the corrective action was unreasonable.<sup>3</sup>

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. *MayaTech Corp.*, B-400491.4, B-400491.5, Feb. 25, 2009, 2009 CPD ¶ 55 at 3. Our Office's standard envisions that the details of a corrective action will fall within the sound discretion and judgment of the contracting agency, and accordingly that a particular corrective action will not be objectionable so long as it is appropriate to remedy a reasonable concern raised by the agency. *360 IT Integrated Solutions, VariQ Corp.*, B-414650.19 *et al.*, Oct. 15, 2018, 2018 CPD ¶ 359 at 6. Our standard thus

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<sup>2</sup> Because the value of the delivery order at issue exceeds \$25 million and the IDIQ was issued by the Navy, the protest is within our Office's jurisdiction to review protests of task or delivery orders issued under multiple-award contracts awarded by defense agencies. 10 U.S.C. § 3406(f)(1)(B).

<sup>3</sup> In addition, we conclude that Pacific's supplemental protest challenging the agency's second request for revised proposals is untimely. Protests based upon alleged improprieties in a solicitation must be filed prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1). The supplemental protest is untimely because it was filed at 4:09 p.m. Eastern Time on May 17, which is 10:09 a.m. Hawaii time--more than two hours after the 8:00 a.m. Hawaii Time deadline for receipt of proposals set by the exchange letters. See AR, Tabs 13a and 13b, Exchange Letters. Accordingly, we dismiss the supplemental protest. In any event, because the arguments raised in the supplemental protest are identical to those in the original protest, had the supplemental protest been timely filed, we would have denied it for the same reasons we deny Pacific's initial protest.

permits the agency discretion to determine how to appropriately remedy its reasonable concerns, absent a showing that this discretion is being abused in some way. *Id.*

Here, we find the agency's corrective action to be reasonable. The agency explains it determined that errors, inconsistencies, and ambiguities in the FOPR were adversely impacting offerors' ability to respond to the FOPR requirements. AR, Tab 10, Decl. of Contracting Officer at 1-2. And, the agency determined that the FOPR changes made to remedy these concerns could have had impacts on offerors' price and non-price proposals. *Id.* at 6. These impacts included a revised ship safety manual, a new requirement to participate in fire safety council meetings, and the potential for acceleration costs. AR, Tab 11, FOPR amend. 14 at 20, 32; AR, Tab 10, Decl. of Contracting Officer at 6. The agency also modified the FOPR evaluation criteria, which required offerors to submit revised workforce plans and which may have affected the relative competitiveness of their proposals. Offerors can reasonably change their prices to respond to changed perceptions of the competitiveness of their proposals. See *Power Connector, Inc.*, B-404916.2, Aug. 15, 2011, 2011 CPD ¶ 186 at 3-5 (finding that a change in evaluation criteria would have led a protester to revise its price). For these reasons, the contracting officer determined that it was appropriate to request revised proposals, including both price and non-price revisions. AR, Tab 10, Decl. of Contracting Officer at 6.

The protester has not shown this decision to be unreasonable. In fact, the protester does not challenge the agency's decision to request revised non-price proposals. The protester agrees that the agency had "reasonable concerns" regarding both issues raised in Vigor's protest and issues discovered in the agency's review of the FOPR, which support the agency's decision to take some form of corrective action. Protest at 6.

Against this backdrop, the protester argues that the agency's corrective action should have been limited to seeking revised non-price proposals, or limited revisions to certain pricing elements only. Protest at 7. We find no merit to this argument. Where an agency amends a solicitation and permits offerors to revise their proposals, our Office has consistently stated that offerors should typically be permitted to revise any aspect of their proposals--including those that were not the subject of the amendment. *Power Connector, supra* at 3. In this respect, our Office has found requests for revised pricing to be within an agency's discretion when made as part of corrective action. See, e.g., *360 IT Integrated Solutions, supra* at 6-10 (agency's decision to obtain most accurate, up-to-date, and competitive pricing available was reasonable even where agency could have proceeded with corrective action without seeking updated pricing); *Veterans Medical Supply, Inc.*, B-418019.6, Jan. 29, 2021, 2021 CPD ¶ 70; *Partnership for Response and Recovery*, B-298443.4, Dec. 18, 2006, 2006 CPD ¶ 3. And, where the corrective action taken by an agency is otherwise unobjectionable, a request for revised

price proposals is not improper merely because the awardee's price has been exposed. *Strand Hunt Constr., Inc.*, B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 6.<sup>4</sup>

Based on our review of the record, therefore, we find that the agency acted within its discretion in permitting offerors to submit revised price proposals as part of the agency's corrective action. We find no basis to sustain Pacific's protest. *360 IT Integrated Solutions, supra* at 6.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>4</sup> The protester notes that our Office has recognized a limited exception to this practice where the record establishes that there was no impropriety in the original evaluation and award, or that an actual impropriety did not result in any prejudice to offerors. *Security Consultants Grp.*, B-293344.2, Mar. 19, 2004, 2004 CPD ¶ 53 at 2-3. However, as discussed above, the protester does not contend that there was no impropriety in the original evaluation or award. Accordingly, the exception of *Security Consultants* does not apply.