



# Decision

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**Matter of:** Acuity International, LLC

**File:** B-422420.4; B-422420.5

**Date:** December 20, 2024

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## DIGEST

Protest challenging the agency's evaluation of the awardee's proposal is denied where the evaluation was reasonable and consistent with the terms of the solicitation.

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## DECISION

Acuity International, LLC, of Reston, Virginia, protests the award of a contract to Dentrust Dental International, Inc., of Pipersville, Virginia, under request for proposals (RFP) No. 70T01023R7663N001, issued by the Department of Homeland Security, Transportation Safety Administration (TSA) to obtain access to a nationwide network of medical service providers. The protester challenges various aspects of the agency's evaluation of Dentrust's proposal.

We deny the protest.

## BACKGROUND

On May 11, 2023, the agency issued the solicitation pursuant to the procedures of Federal Acquisition Regulation part 12, seeking a contractor to provide medical

examinations and drug testing to TSA candidates and employees.<sup>1</sup> Agency Report (AR), Tab 2, RFP amend. 1, attach. 2, SOW at 312; AR, Tab 7, RFP amend. 3 at 538.<sup>2</sup> The solicitation contemplated the award of a fixed-price contract with a 12-month base period and four 12-month option periods. RFP at 469-72.

The RFP established that TSA would make award using a best-value tradeoff considering the following factors, listed in descending order of importance: technical and systems approach; management approach; past performance; small business consideration; and price. RFP at 538-39. The RFP provided that all nonprice factors, when combined, were more important than price, and as proposals approached equality under the nonprice factors, price would become more important. *Id.* at 539.

Relevant here, for the management approach factor, offerors were required to provide a staffing matrix with a breakdown of hours for each labor category, with each labor category mapped to sections and subsections of the SOW. RFP at 535. The RFP provided that the agency would evaluate whether the staffing matrix demonstrated the offeror's capabilities for each SOW element. *Id.* at 540.

As it pertains to the staffing matrix, during a question and answer (Q&A) process for the procurement, a potential offeror noted that for the technical and systems approach factor, RFP section 7.7.1 directed offerors to demonstrate the offeror's approach for the five tasks referenced in section 2 of the SOW, as opposed to the entire SOW. AR, Tab 2a, RFP amend. 1, Q&A at 378-001. The potential offeror asked TSA to confirm that the staffing matrix should address only SOW section 2, as referenced in RFP section 7.7.1, and the agency responded to the question as follows: "Yes, that is correct as referenced in section RFP Section 7.7.1." *Id.*

As also relevant here, the RFP required offerors to provide a basis of estimate for each contract line item number and sub-contract line item number, to include all labor categories used, levels of effort, and burdened labor rates. RFP at 537.

The solicitation provided that the agency would not evaluate a proposal where the proposal package was incomplete, and it may reject any proposal that is found to be noncompliant with the solicitation. RFP at 538-39.

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<sup>1</sup> TSA issued three amendments to the RFP. Contracting Officer's Statement (COS) at 2-3. Amendment 1, issued on July 31, 2023, and submitted as tab 2 to the agency report, provided a revised version of the statement of work (SOW), and all citations to the SOW in this decision refer to the version of the SOW issued with amendment 1. Amendment 3, issued on May 31, 2024, and submitted as tab 7 to the agency report, provided the final version of the solicitation, and all citations to the RFP in this decision refer to that version.

<sup>2</sup> Citations to documents contained in the agency report use the Bates numbers assigned by the agency.

The agency received proposals from multiple offerors, including Acuity and Dentrust, prior to the August 22, 2023, submission deadline. COS at 2. After evaluating proposals, TSA selected Dentrust’s proposal for award, and Acuity filed a protest challenging the award with our Office. *Id.* We dismissed the protest as academic after TSA advised our Office of its intent to take corrective action by terminating the award, reviewing and amending the RFP, conducting discussions, soliciting and evaluating revised proposals, and making a new award decision. *Id.*; *Acuity International, LLC*, B-422420, B-422420.2, Apr. 26, 2024 (unpublished decision).

Following dismissal of Acuity’s first protest, the agency amended the solicitation, opened discussions, and requested final proposal revisions.<sup>3</sup> COS at 2. The agency received proposal revisions from five offerors; it found that the proposals submitted by the protester, Dentrust, and a third offeror (referred to here as Offeror No. 3) were eligible for award; and it evaluated the proposals as follows:

	Acuity	Offeror No. 3	Dentrust
<b>Technical and Systems Approach</b>	Outstanding	Outstanding	Outstanding
<b>Management Approach</b>	Outstanding	Outstanding	Outstanding
<b>Past Performance</b>	Acceptable	Acceptable	Acceptable
<b>Small Business Considerations</b>	Acceptable	Acceptable	Acceptable
<b>Total Evaluated Price</b>	\$94,458,779	\$86,750,796	\$88,712,914

COS at 4; AR, Tab 24, Tradeoff Analysis at 1315.

In evaluating Dentrust’s proposal under the management approach factor, the technical evaluation team (TET) found Dentrust’s staffing matrix met the requirements. See AR, Tab 20, Dentrust TET Report at 1257-59. The TET assigned Dentrust’s proposal an overall rating of outstanding under the management approach factor. *Id.* at 1259.

The contracting officer discussed the evaluation results with the TET and the price evaluation team (PET) and prepared a tradeoff analysis and award recommendation. AR, Tab 24, Tradeoff Analysis at 1313. The contracting officer first compared the TET’s and PET’s findings for the proposals submitted by Dentrust and Acuity and determined that although the proposals received the same ratings under the nonprice factors, Dentrust’s proposal “provided the greater benefit” under the technical and systems approach factor and the management approach factor--the two most important factors. *Id.* at 1318. The contracting officer concluded that nothing in Acuity’s proposal warranted paying a price premium. *Id.* at 1319.

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<sup>3</sup> Subsequently, Acuity submitted an agency-level protest, challenging the agency’s decision to limit discussions and proposal revisions. COS at 3. TSA resolved the protest by amending the RFP and requesting final proposal revisions. *Id.*

The contracting officer also compared the evaluation findings for the proposals submitted by Acuity and Offeror No. 3. AR, Tab 24, Tradeoff Analysis at 1323-26. The contracting officer discussed the strengths identified in each proposal and noted that Offeror No. 3's proposed price was nine percent lower than the price proposed by the protester. *Id.* at 1325. The contracting officer concluded: "Based on the non-price and price analysis tradeoffs stated above, in comparison between Acuity and [Offeror No. 3], it is [Offeror No. 3] that represents the best value to the Government." *Id.* at 1326.

The contracting officer determined that Dentrust's proposal was technically superior to the proposals submitted by Acuity and Offeror No. 3, and the contracting officer recommended Dentrust's proposal for award. AR, Tab 24, Tradeoff Analysis at 1326.

The source selection authority (SSA) reviewed the TET report, PET report, and the tradeoff analysis and award recommendation. AR, Tab 25, Source Selection Decision at 1329. The SSA compared the proposals submitted by Dentrust and Acuity and determined that Dentrust's proposal provided more benefit under the most important nonprice factors. *Id.* The SSA found that nothing in Acuity's proposal justified paying a higher price. *Id.* at 1330. The SSA also compared the proposals submitted by Dentrust and Offeror No. 3 and concluded that the advantages in Dentrust's proposal offset its higher price. *Id.* at 1330-31. The SSA concluded that Dentrust's proposal represented the best value to the agency, with many notable benefits when compared to the proposals submitted by Acuity and Offeror No. 3. *Id.* at 1331.

TSA awarded the contract to Dentrust, and after requesting and receiving a debriefing, this protest followed.

## DISCUSSION

The protester challenges TSA's evaluation of the awardee's staffing matrix and basis of estimate. Acuity primarily contends that Dentrust's proposal did not comply with several solicitation requirements, and the protester asserts that TSA should have found the proposal ineligible for award. We address these arguments in turn, and, for the reasons that follow, find no basis on which to sustain the protest.<sup>4</sup>

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<sup>4</sup> After submitting the agency report and supplemental agency report responding to the protester's allegations, TSA requested dismissal of the protest, arguing that Acuity is not an interested party to challenge the award because of the presence of an unchallenged intervening offeror, Offeror No. 3. Agency Supp. Brief at 1. The jurisdiction of our Office is established by the Competition in Contracting Act of 1984, which states that only an interested party may protest a federal procurement, including the award or proposed award of a contract. 31 U.S.C. §§ 3551, 3553(a). In a post-award context, we have generally found that a protester is an interested party to challenge an agency's evaluation of proposals only where there is a reasonable possibility that the protester would be next in line for award if its protest were sustained. *SOC LLC*, B-418487.2, B-418487.3, Feb. 4, 2021, 2021 CPD ¶ 75 at 15-16. In this regard, where there is an

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At the outset, we note that in reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

### Staffing Matrix Evaluation

The protester challenges TSA's evaluation of Dentrust's staffing matrix, arguing that Dentrust's proposal did not comply with two requirements of the solicitation, and as a result, it was "fundamentally impossible to determine how Dentrust proposed to staff and perform the contract." Comments & Supp. Protest at 2. We address each allegation below.<sup>5</sup>

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intervening offeror in line for the award if the protester's challenge was sustained, and the protester has not challenged the evaluation of that intervening offeror's proposal, the intervening offeror has a greater interest in the procurement than the protester. In that circumstance, we generally consider the protester's interest to be too remote to qualify as an interested party. *HCR Constr., Inc.; Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 6-7 n.6. Here, in advancing its argument for dismissal, the agency relies on the contracting officer's tradeoff analysis and award recommendation, which found that Offeror No. 3's proposal presented a better value than the protester's proposal. Agency's Supp. Brief at 1-2. However, as the protester points out, the SSA, who was the final selection authority for the award, did not adopt the contracting officer's analysis, and the SSA did not compare the proposals submitted by Acuity and Offeror No. 3. Protester's Supp. Brief at 2-3. In light of the SSA's silence with respect to the relative merits of the proposals submitted by Offeror No. 3 and the protester, we cannot conclude that Offeror No. 3's proposal was next in line for award. Accordingly, we decline to dismiss the protest.

<sup>5</sup> Acuity raises other collateral allegations concerning the staffing matrix evaluation. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest. For example, the protester asserts that the agency should have found Dentrust's proposed staffing inadequate. Comments & Supp. Protest at 13-15. To support its argument, Acuity, the incumbent, primarily asserts that because Dentrust proposed fewer labor hours than Acuity itself did, the awardee's staffing approach is inherently insufficient. *Id.* at 13. As stated above, an agency has discretion in evaluating technical proposals, and a protester's disagreement with the agency's evaluative judgment, without more, does not provide a basis for us to conclude that an evaluation was unreasonable. *AECOM Mgmt. Servs., supra.; Vertex Aerospace, supra.* Here, the protester has not shown that  
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## Staffing Extraneous SOW Sections

Acuity argues that Dentrust's proposal impermissibly included staffing for tasks in its staffing matrix that were not required by the RFP, and this resulted in Dentrust artificially inflating its proposed level of effort. Comments & Supp. Protest at 6.

As discussed above, the RFP required offerors to submit "a Staffing Matrix with a breakdown of hours for each labor category, mapped to each section and subsection of the SOW." RFP at 535. Additionally, as noted above, during the Q&A,<sup>6</sup> TSA informed offerors that they should address staffing for the tasks and subtasks within SOW section 2--and not the entire SOW. AR, Tab 2a, RFP amend. 1, Q&A at 378-001.

The protester is correct that Dentrust's staffing matrix included staffing for tasks outside of SOW section 2. AR, Tab 15, Dentrust Staffing Matrix. For example, Dentrust mapped the program manager to subsections within SOW sections 1 through 4. *Id.* at row 7. Similarly, Dentrust mapped the director of information technology and security to requirements within SOW sections 1 and 4. *Id.* at row 46. However, we disagree with Acuity that Dentrust artificially inflated its proposed level of effort by including staffing for tasks outside of SOW section 2 in its staffing matrix.

The protester's argument assumes that Dentrust's inclusion of staffing for SOW sections other than section 2 in its staffing matrix prevented TSA from discerning Dentrust's proposed level of effort for SOW section 2 tasks. However, Dentrust's proposed staffing for SOW section 2 was apparent from its staffing matrix. Dentrust mapped [DELETED] labor categories to SOW section 2 tasks. AR, Tab 15, Dentrust Staffing Matrix. Of those [DELETED] labor categories, Dentrust mapped only two labor categories to SOW section 2 and an additional section. *Id.* These two labor categories account for a total of [DELETED] labor hours or [DELETED] full-time equivalents. For the other [DELETED] labor categories mapped to SOW section 2, the labor category is not mapped to any other SOW section, which means the hours provided in the staffing matrix (a total of [DELETED] hours) pertain solely to SOW section 2. *Id.* at rows 14-35. As such, because Dentrust's staffing matrix clearly showed the staffing proposed for SOW section 2, the inclusion of staffing for other SOW sections and tasks did not prevent TSA from ascertaining Dentrust's proposed level of effort for the SOW section 2 tasks.

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TSA's determination that Dentrust proposed sufficient staffing was unreasonable. Instead, Acuity disagrees with the TET's judgment and claims that any staffing approach that used fewer labor hours than the protester's approach was unacceptable. Accordingly, we reject this argument.

<sup>6</sup> We note that information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and provided to all offerors (*i.e.*, the Q&A) meets all of the essential elements of an amendment and is sufficient to operate as such. *Zolon PCS II, LLC; Polaris Consulting Grp., Inc.*, B-420745.2 *et al.*, Sept. 20, 2023, 2023 CPD ¶ 227 at 9 n.6.

In sum, although Acuity is correct that Dentrust included staffing for tasks outside of the required SOW section in its staffing matrix, the protester has not shown that the inclusion of the additional information prevented TSA from understanding how Dentrust would staff SOW section 2.<sup>7</sup> Accordingly, the protester's allegations to the contrary are denied.

#### Allocation of Hours to SOW Sections and Subsections

As its second challenge to the agency's evaluation of Dentrust's staffing matrix, Acuity contends that Dentrust failed to provide "a breakdown of **hours** for each labor category, mapped to each section and subsection of the SOW." Comments & Supp. Protest at 7. For each labor category, Dentrust's staffing matrix provided a description of the role, the number of labor hours proposed, and a list of the SOW sections and subsections the staff from each labor category would perform.<sup>8</sup> AR, Tab 15, Dentrust Staffing Matrix. The protester asserts that the RFP required Dentrust to allocate a portion of the hours proposed for each labor category to specific SOW sections and subsections.

TSA responds that the TET found that Dentrust's staffing matrix included sufficient information because it included the awardee's proposed labor categories, hours, and a mapping to the SOW sections and subsections. Supp. Memorandum of Law (MOL) at 3; TET Member Decl. ¶ 6.

Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by first assessing whether each advanced interpretation is reasonable. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 5. An ambiguity exists where two or more reasonable interpretations of the solicitation are possible. *Id.*

As noted above, the RFP required offerors to submit "a Staffing Matrix with a breakdown of hours for each labor category, mapped to each section and subsection of the SOW." RFP at 535. The RFP provided that "The detail must be sufficient to clearly allow the Government to map the Offeror's capabilities for each element of the SOW." *Id.*

Acuity contends that to satisfy this requirement, an offeror could not provide high-level mapping--like Dentrust did--and was instead required to allocate the number of hours by

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<sup>7</sup> We also note that Acuity has not identified any language in the solicitation that precluded an offeror from electing to provide additional information about its proposed staffing in the offeror's staffing matrix.

<sup>8</sup> For example, the staffing matrix indicated that Dentrust's [DELETED] case managers will each spend [DELETED] hours on [DELETED] SOW subsections, and it stated that case managers handle cases from inception to closeout and are responsible for quality assurance. AR, Tab 15, Dentrust Staffing Matrix at row 15.

labor category to specific SOW sections and subsections. Comments & Supp. Protest at 7-8. The protester contends that allocating the hours proposed for each labor category to specific SOW subsections was necessary to demonstrate the offeror's capabilities for each element of the SOW. Supp. Comments at 8 (*citing* RFP at 535).

We reject the protester's argument that the solicitation required offerors to specify the number of hours allocated to each SOW section and subsection. The RFP required offerors to provide "a breakdown of hours for each labor category, mapped to each section and subsection of the SOW." RFP at 535. A reasonable interpretation of the requirement to provide "a breakdown of hours for each labor category" was to apportion the total number of labor hours proposed for the contract to various labor categories. The RFP did not direct offers to break down the hours proposed for a given labor category into the corresponding SOW sections and subsections. Moreover, in our view, a reasonable interpretation of the requirement to "map[] to each section and subsection of the SOW" was to identify the SOW sections and subsections that a given labor category would perform. The protester has not shown that the RFP expressly required the granular level of detail that Acuity demands.

Additionally, Acuity has not explained why TSA could not evaluate a proposal in accordance with the RFP: *i.e.*, find that an offeror demonstrated its capabilities to perform the SOW elements (*e.g.*, scheduling medical examinations, reporting examination results to TSA, notifying candidates of their results), absent the offeror proposing the specific number of hours required to perform each task. The TET reviewed Dentrust's staffing matrix and determined the staffing matrix included sufficient information to demonstrate Dentrust's capabilities for each element of the SOW. TET Member Decl. ¶ 6. As noted above, Dentrust's staffing matrix showed the proposed labor categories, provided a description for each role, indicated the number of hours each labor category would perform, and identified the tasks the labor category would perform. AR, Tab 15, Dentrust Staffing Matrix. We find the agency could reasonably conclude that with this information, Dentrust demonstrated its capabilities to perform each SOW element, without specifying the number of hours each labor category would dedicate to each SOW element. For these reasons, we reject Acuity's argument that Dentrust's proposal was ineligible for award because Dentrust did not allocate the hours proposed for each labor category to SOW sections and subsections.

#### Basis of Estimate

Acuity argues that TSA should have found Dentrust's proposal to be noncompliant because Dentrust's basis of estimate did not include the level of detail required by the solicitation. Comments & Supp. Protest at 8-9. The agency does not dispute that Dentrust's proposal failed to comply with the RFP. Instead, TSA responds that the question of whether the awardee's basis of estimate was compliant is irrelevant because the agency did not use any offeror's basis of estimate in the evaluation. Supp. MOL at 3; PET Decl. ¶ 3.



Based on our review of the record, we conclude that the agency waived the requirement to submit a basis of estimate requirement by accepting Dentrust's proposal because Dentrust's basis of estimate did not include the level of detail required by the RFP. AR, Tab 16, Dentrust Price Proposal at 957. We find, however, that this waiver does not provide a basis to sustain the protest. Competitive prejudice is an essential element of a viable protest; and where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. *DRS Network & Imaging Sys., LLC*, B-413409, B-413409.2, Oct. 25, 2016, 2016 CPD ¶ 315 at 10. In this regard, even where an agency waives a solicitation requirement, our Office will not sustain the protest unless the protester can demonstrate that it was prejudiced by the waiver, *i.e.*, where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. *SunGard Data Sys., Inc.*, B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 7. In cases where the protester argues that an agency waived a certain requirement, prejudice does not mean that, had the agency failed to waive the requirement, the awardee would have been unsuccessful. *DRS Network & Imaging Sys., supra*. Rather, the pertinent question is whether the protester would have submitted a different offer that would have had a reasonable possibility of being selected for award had it known that the requirement would be waived. *Id.*

Here, we find that the protester has not demonstrated competitive prejudice. Namely, Acuity has not shown how it would have altered its proposal to its competitive advantage had it been given the opportunity to submit a less detailed basis of estimate. Accordingly, we deny this allegation.<sup>9</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>9</sup> Protester, citing *Tribalco*, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 12 n.7, contends that its protest should be sustained because TSA excluded two other proposals from the procurement for submitting noncompliant proposals, and Acuity was therefore prejudiced by the agency's acceptance of Dentrust's noncompliant basis of estimate. Acuity's reliance on our decision in *Tribalco* is misplaced. There, we sustained a protest alleging disparate treatment because the agency waived a requirement for the awardee and penalized the protester for failing to satisfy the same requirement. Here, the protester has not raised any allegations of disparate treatment concerning the evaluation of its proposal.