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# Decision

**Matter of:** TransAtlantic Lines, LLC

**File:** B-414148

**Date:** February 7, 2017

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## DIGEST

Protest challenging the exclusion of the protester’s proposal from the competitive range is denied where the agency’s evaluation and competitive range determination were reasonable and in accordance with the solicitation criteria.

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## DECISION

TransAtlantic Lines, LLC (TAL), of Greenwich, Connecticut, protests the Department of the Navy, Military Sealift Command’s (MSC) exclusion of its proposal from the competitive range under request for proposals (RFP) No. N32205-16-R-3505, to provide a clean, double-hull tanker with identified minimum specifications and capabilities to be chartered by MSC for worldwide cargo transportation. The protester asserts that the agency unreasonably found its proposal to be technically unacceptable, and unreasonably excluded the protester’s proposal from the competitive range.

We deny the protest.

## BACKGROUND

The RFP sought proposals for the award of a fixed-price contract for a double-hull tanker for worldwide cargo transportation. Award would be made on a lowest-priced, technically acceptable basis. RFP at 89. Specifically, to be considered for award, an offeror must receive an acceptable rating under the technical and past performance factors and provide an offer that conforms to the solicitation requirements. Id. at 6-8, 89. As relevant to this protest, the RFP required that the technical proposal include a “practicable schedule for the delivery of the Vessel.” RFP at 85, § 7.1.7. The

RFP contained several attachments to be completed by the offeror, including Attachment B-1, Fuel Consumption Data. See RFP, Attach. B-1. That attachment sought--for four categories of usage--the metric tons per day that the proposed ship would consume, the type of fuel, and the price per metric ton. Id. The attachment provided a fixed number of days for each usage category. Those figures would yield a total fuel cost. Id.

The agency received several proposals. Agency Report (AR), Attach. 1, Competitive Range Determination, Excerpt from Business Clearance Memorandum. After evaluating proposals, the agency established a competitive range of the three lowest-priced offerors, whose prices were clustered together, because that cluster of prices suggested a natural cutoff for inclusion in the competitive range. AR, Attach. 1, Competitive Range Determination, Excerpt from Business Clearance Memorandum. Specifically, the agency concluded that the difference in price between the lowest-priced offeror and the second and third lowest-priced offerors was 4.38 percent and 5.51 percent, respectively. Id. Further, the difference between the lowest-priced offeror and the fourth lowest-priced offeror was 12.57 percent. Id. As a result, the agency concluded that there was a “natural break in pricing between these offers” and created a competitive range of three. Id. The agency also concluded that award could not be made based on initial proposals. Discussions were necessary “to correct omissions and deficiencies in all proposals in the competitive range.” Id. Nonetheless, the contracting officer believed that an award could be made after discussions.

The agency concluded that the protester’s price was “one of the highest of offers received,” and the protester’s proposal was evaluated as unacceptable for failure to provide a delivery schedule and the fuel consumption data attachment. Protest, Exh. C, Pre-Award Debriefing at 5. The protester was notified that its proposal was excluded “from the competitive range solely on price and not technical acceptability.” Protest, Exh. D, Letter from Contracting Officer to Protester, Nov. 22, 2016. This protest followed.

## DISCUSSION

The protester asserts that the agency could not exclude the protester’s proposal from the competitive range because the offerors in the competitive range had technically unacceptable proposals that might not be remedied during discussions, or, if remedied, would result in a higher price, and TransAtlantic might have lowered its price following discussions. In addition, the protester argues that the agency unreasonably found its proposal unacceptable for failure to provide a delivery schedule and the fuel consumption data attachment.

As noted above, prior to TransAtlantic’s protest, the agency asserted that the competitive range decision was based on price alone. See Protest, Exh. D, Letter from Contracting Officer to Protester, Nov. 22, 2016. In response to TransAtlantic’s protest, the agency argues that it reasonably excluded the protester’s proposal from the competitive range because the offerors in the competitive range had proposed

“significantly lower” prices, and because, “[b]y its own admissions, TAL failed to provide documentation required by the solicitation,” and the agency therefore reasonably evaluated its proposal as unacceptable. Agency Request for Dismissal, Dec. 2, 2016, at 2.

### Exclusion from the Competitive Range

We turn first to the issue of whether the agency reasonably excluded the protester’s proposal from the competitive range. The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. Sea Box, Inc., B-408182.5, Jan. 10, 2014, 2014 CPD ¶ 27 at 7. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly-rated. Id. at 8, citing Federal Acquisition Regulation (FAR) § 15.306(c)(1). Even a technically acceptable proposal may reasonably be excluded from the competitive range, where it does not stand a real chance of being selected for award. Environmental Restoration, LLC, B-413781, Dec. 30, 2016, 2017 CPD ¶ 15 at 5. In a lowest-priced, technically acceptable procurement, cost or price not only is a proper factor for consideration, but may emerge as the dominant factor in determining whether proposals fall within the competitive range. Id. A protester’s disagreement with an agency’s evaluation and competitive range judgment, without more, does not establish that the agency acted unreasonably. SPAAN Tech, Inc., B-400406, B-400406.2, Oct. 28, 2008, 2009 CPD ¶ 46 at 9.

Here, the agency established a competitive range of the three lowest-priced offerors because the difference in the evaluated price between the lowest-priced offeror and the second and third lowest-priced offerors was only 4.38 percent and 5.51 percent, respectively, and the difference between the lowest-priced offeror and the fourth lowest-priced offeror was 12.57 percent. As a result, the agency concluded that there was a natural break or cutoff in pricing between these offers. Although the agency also concluded that award could not be made based on initial proposals, and that discussions were necessary, the contracting officer believed that after discussions, award could be made to an offeror in the competitive range.

The protester’s total evaluated price was one of the highest the agency received. TransAtlantic argues that the agency’s assumption that the protester would not have been able to sufficiently lower its price during discussions was “pure speculation.” Response to Agency’s Request for Dismissal, Dec. 9, 2016, at 3. As noted above, however, in a lowest-priced, technically-acceptable competition, price may emerge as the dominant factor in whether a proposal is included in the competitive range. Here, in the agency’s judgment, the protester’s proposal lacked a reasonable chance of receiving award due to the considerable difference between the protester’s proposed price and the proposed prices of the proposals that were included in the competitive range. Further, even assuming that TransAtlantic would have lowered its price as a matter of business judgment, the competitive range determination is based upon the proposals as submitted. See National Medical Staffing, Inc., B-259700, Mar. 6, 1995, 95-1 CPD ¶ 133 at 3-4. This is especially true where, as here, the solicitation stated

that award may be made without discussions. RFP at 91; see id. Moreover, while the protester contends that it might have lowered its price, it is unreasonable to expect that only the protester would reduce its price.

Further, the contracting officer determined that although discussions were necessary with the three offerors in the competitive range, the agency expected an award could be made after discussions. Here, we find nothing unreasonable or improper regarding the agency's competitive range determination. The protester's disagreement with the agency's exercise of its sound judgement is insufficient to establish that the agency acted unreasonably with respect to its competitive range determination and provides no basis on which to sustain this protest. SPAAN Tech, Inc., supra.

### Evaluation of the Protester's Technical Proposal

The protester also argues that the agency unreasonably found its proposal unacceptable for failure to provide a delivery schedule and the fuel consumption data attachment. In response, the agency explains that its competitive range was comprised of the three lowest-priced offerors and excluded all other offerors, regardless of whether those other offerors' proposals could be made acceptable. The agency also argues that "[b]y its own admissions, [TransAtlantic] failed to provide documentation required by the solicitation," and the agency therefore reasonably evaluated its proposal as unacceptable. Agency Request for Dismissal, Dec. 2, 2016, at 2.

We find that the protester's argument fails for a lack of prejudice. Although the protester argues that the agency failed to reasonably evaluate its technical proposal, the protester fails to point to any evidence to show that its competitive position was negatively impacted by the agency's alleged errors in establishing the competitive range.

The record reflects that, for purposes of establishing the competitive range, the contracting officer essentially treated the higher-priced offerors, including TransAtlantic, as technically acceptable because the agency established a competitive range of the three lowest-priced offerors, whose prices were clustered together, which were susceptible of being made acceptable after discussions. AR, Attach. 1, Competitive Range Determination, Attach. 1, Excerpt from Business Clearance Memorandum. TransAtlantic's proposal was not fourth, or even fifth, in line for award; in fact, the protester's proposed price was one of the highest. Id. Accordingly, even had the agency concluded TransAtlantic's proposal was technically acceptable, as the protester asserts, its significantly higher-priced offer was viewed as having no realistic chance of award as there were other lower-priced offers susceptible of being made acceptable through discussions. Agency Request for Dismissal, Dec. 2, 2016, at 2. As such, the protester has failed to demonstrate any prejudice as a result of its exclusion from the competitive range. Environmental Restoration, LLC, supra.

Further, in any event, we find the agency's evaluation reasonable. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's

judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Odyssey Mktg. Group, Inc., B-412695, B-412695.2, April 21, 2016, 2016 CPD ¶ 109 at 3-4. A protester's disagreement with an agency's judgment in evaluating proposals does not establish that the agency acted unreasonably. Id. It is not a contracting agency's responsibility to search for information to establish the acceptability of an offeror's proposal. URS Fed. Servs., Inc., B-411024.4, Apr. 30, 2015, 2015 CPD ¶ 149 at 5; Superior Gunite, B-402392.2, March 29, 2010, 2010 CPD ¶ 83 at 4. Rather, it is the offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. URS Fed. Servs., Inc., supra, at 5-6; CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5.

The protester argues that, while it did not provide a completed fuel assumption data attachment, its proposal contained all of the "data [that] would have allowed the Agency to calculate the metric tons per day and the ultimate total fuel costs using the other assumed data points in the spreadsheet." Protest at 10. Although it is not clear from the record what "other assumed data points" would enable a third party to derive all of the information contained in the missing attachment, even if it were clear, the agency is not here obligated to make those calculations. URS Fed. Servs., Inc., supra; Superior Gunite, supra.

With respect to the failure of its proposal to include a delivery schedule, the protester asserts that even though its technical proposal did not include a separate document identifying a delivery schedule, its proposal nonetheless affirmed its ability to meet the RFP's delivery date windows. Protest at 9. Moreover, TransAtlantic argues, its cover narrative and its responses in other areas of its proposal (to fill-in boxes 5 (lay days), 18 (delivery date, vessel), and 19 (estimated readiness date)) met TransAtlantic's obligations to provide a delivery schedule. Id. at 8-9.

However, the cover letter provides no specifics on vessel delivery. See Proposal Transmittal Letter, Oct. 18, 2016, at 4. Further, box 5 (lay days) contains two sets of lay days and the notation "[t]o be narrowed bilaterally to a 5-day window 30 days prior to delivery to MSC." Protester's Proposal at unnumbered page 61. The protester's responses to boxes 18 (delivery date, vessel) and 19 (estimated readiness date) was "AS PER RFP." Id. at 64. The agency argues that the RFP required a separate delivery schedule, which the protester's proposal failed to provide. See Agency Request for Dismissal, Dec. 2, 2016, at 2. The plain language of the RFP-- that the technical proposal shall include a "practicable schedule for the delivery of the Vessel"-- supports the agency's contention.

The protester also argues that even if the RFP required a separate delivery schedule as part of the technical proposal or required more specificity with respect to delivery dates, "the failure to meet these requirements is a minor deficiency that could have been [corrected] through communications [permitted] before the establishment of the competitive range." Protest at 9-10, citing FAR § 15.306(b)(3) (permitting

communications addressing ambiguities in the proposal or other concerns). The FAR permits, but does not require, such communications prior to the establishment of a competitive range. See FAR § 15.306(b)(2). Given the proposal requirements in the RFP and the content of the protester's proposal, we see no reason to question the reasonableness of the agency's evaluation of the protester's technical proposal as unacceptable for failure to provide a delivery schedule and a completed fuel assumption data attachment.

The protest is denied.

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General Counsel