

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

FINDINGS AND RECOMMENDATIONS

Matter: Protest of Guidehouse LLP
Under Solicitation No. DTFAWA-17-R-00017

Docket No.: 19-ODRA-00857

Appearances

For the Protester: Brian G. Walsh, Esq., Tracie Winfrey Howard, Esq., Kendra P. Norwood, Esq., Moshe B. Broder, Esq., and Colin J. Cloherty, Esq., of Wiley Rein LLP

For the FAA Headquarters: Justin V. Briones, Esq., and William Selinger, Esq.

For the Intervenor: Craig A. Holman, Esq., Dana E. Koffman, Esq., Michael E. Samuels, Esq., and Amanda J. Sherwood, Esq., of Arnold & Porter

Guidehouse LLP (“Guidehouse”)¹ challenges the award of a contract under Solicitation No. DTFAWA-17-R-00017 issued by the Federal Aviation Administration (“FAA”) Office of Finance and Management. The solicitation sought proposals for Enterprise Financial Services (“EFS”) in support of the FAA’s Office of Financial Services. *Agency Response* (“AR”) Tab 5, § C.1. The awardee, Ernst & Young LLP (“EY”), intervened in the protest. The potential value of its contract is over \$134 Million.

¹ When Guidehouse submitted its proposal, it was known as PricewaterhouseCoopers Public Sector LLP (“PWC”). *Protest* at 1; *Revised and Supplemental Protest* at 1. Subsequently, PWC was acquired by another company and renamed Guidehouse, but the change in ownership did not change the terms of its proposal. *Id.*

Guidehouse’s challenges are set forth in an initial protest filed on May 24, 2019, and a revised and supplemental protest, filed on July 30, 2019. *Initial Protest* at 1-21; *Revised and Supplemental Protest* at 1-26. As explained below, Guidehouse fails to demonstrate by the preponderance of the evidence that the FAA’s evaluation and best value determination, lacked a rational basis or was arbitrary, capricious or an abuse of discretion. The ODRA, therefore, recommends that the protest be denied.

I. The Standard of Review

A protester, as the party seeking relief, bears the burden of proof and must demonstrate by the preponderance of the evidence that the challenged decision lacks a rational basis; is arbitrary, capricious, or an abuse of discretion; or is inconsistent with the Acquisition Management System (“AMS”) or the underlying solicitation. 14 C.F.R. § 17.21(m) (2019); *see also* 5 U.S.C. § 556(d), *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest of Adsystech, Inc.*, 09-ODRA-00508).

II. Factual Background

The EFS contract at issue is part of the FAA’s Federal Integrated Support (“FIS”) program, which manages the FAA’s financial operations. *AR* Tab 27, at ¶ 2. Generally, the purpose of the EFS contract is to “ensure that FAA and DOT [Department of Transportation] have access to the resources necessary to carry out financial and budget operations and ensure the efficacy of those operations.” *AR* Tab 5, § C.1.2. Any office within the DOT may order work within the scope of this contract to support its own financial, budget, and management related activities. *AR* Tab 5, § C.1.4.

The acquisition was conducted on two tracks, i.e., a restricted competition among small businesses and an unrestricted competition. *AR* Tab 5, § L.6. This protest concerns the award made under the unrestricted track.

The contract’s scope involves eight work areas as follows:

- Work Area 1 – Policies and Processes
- Work Area 2 – Internal Controls
- Work Area 3 – Program and Project Management
- Work Area 4 – Day-To-Day Operations
- Work Area 5 – Training
- Work Area 6 – Strategic Planning, Investment Analysis and Program Evaluation
- Work Area 7 – Risk Management
- Work Area 8 – Other Financial, Budget, and Management Related Activities

AR Tab 5, § C.3.1-8.

This indefinite delivery/indefinite quantity contract uses task orders issued on a time-and-materials, labor-hour, firm-fixed price, or hybrid basis. *AR* Tab 5, §§ B.2 and B.2.1. The contract’s period of performance is comprised of one base-period of three years from the date of award, and four, one-year option periods. *AR* Tab 5, § F.2.1-3.

The solicitation states that contractor personnel will be assigned according to labor category descriptions, qualifications, and a pricing schedule. *AR* Tab 5, §§ F.1.2 and H.4.2.² The labor categories include various levels of accountants, accounting technicians, administrative assistants, auditors, budget analysts, consultants, cost analysts, financial analysts, graphics/documentation specialists, human capital strategists, math/statisticians, policy analysts, program managers, project/task leaders, subject matter experts, systems auditors, technical editor/writers, and training developers. *AR* Tab 5, Attachment J001. The labor pricing schedule contains fully burdened hourly rates that include wages, indirect costs, fringe benefits, overhead, general and administrative cost, and profit. *AR* Tab 5, § B.3.2.1.

The solicitation states that the award decision will be based on a best value/trade-off methodology that examines proposals in accordance with evaluation factors pertaining to “relevant experience, technical, cost, past performance and

² Generally, personnel assigned to perform task order work under the contract must meet or exceed the minimum qualification requirements for the labor category. *Id.*

compliance.” *AR* Tab 5, § M.3.1. According to the solicitation, “This approach does not require FAA to award to the Offeror submitting the highest rated technical proposal or to the Offeror submitting the lowest prices, although the ultimate award decision may be to either of these Offerors.” *AR* Tab 5, § M.3.1.

Relevant experience was evaluated on a pass/fail basis as to whether the offeror has experience that is relevant to EFS requirements in terms of size, scope, complexity and type.³ *AR* Tab 5, § M.4.1.1. The solicitation further provides for an evaluation of technical capability based on Factor 1 (Staffing, Management, and Quality Control) and Factor 2 (Technical Approach). *AR* Tab 5, § M.4.2. Technical capability was assessed qualitatively by assigning strengths and weaknesses for each factor. *AR* Tab 9 at 13-14. These qualitative assessments then were subjected to a process whereby the evaluators reached consensus on an adjectival rating for each factor, and the proposal as a whole. *Id.* The adjectival ratings, in pertinent part, were defined as follows:

- Excellent - Proposal demonstrates a comprehensive understanding of the contract requirements and presents a plan for providing services that is almost assured to benefit the Government in terms of quality, schedule or cost control. Proposal contains multiple strengths, and no weaknesses.
- Good - Proposal demonstrates fully acceptable understanding of contract requirements and presents a plan for providing services that is likely to benefit the Government in terms of quality, schedule or cost control. Proposal has one or more strengths. Proposal may contain a few weaknesses but they are outweighed by strengths elsewhere in the proposal.

AR Tab 5, § 4.2.2.

As for the relative importance of the technical evaluation factors, solicitation § M.3.3 states that Factor 1 (Staffing, Management, and Quality Control) is more

³ To demonstrate relevant experience, offerors were required to provide at least three examples of performance as a prime contractor of a contract with a total value of \$20,500,000 or more; an indefinite delivery/indefinite quantity contract or blanket purchase agreement with 10 or more concurrent task orders; work requirements similar to the EFS Statement of Work; and performance ongoing or completed within the past three years. *AR* Tab 5, Table § M.4.1.1.

important than Factor 2 (Technical Approach). *AR* Tab 5, § M.3.3. The solicitation further states, “Combined, the weighted technical factors (Factor 1 and Factor 2) are significantly more important than Price.” *Id.* Past performance was evaluated based on past performance questionnaires submitted under § L.14, as well as “readily available sources such as past performance databases (i.e. Contractor Performance Assessment Reporting system (CPARS)).” *AR* Tab 5, § M.6.1. Past Performance was rated on a High/Low Risk basis, with a rating of “High Risk” rendering an offeror ineligible for award. *Id.* at § M.3.3.

The evaluation of price proposals considered the total evaluated price (“TEP”) as well as the component elements (hourly rates and escalation factors) of the TEP. *AR* Tab 5, § M.5.1. The solicitation stated, “The FAA anticipates that it will receive a sufficient number of responses to this solicitation to constitute adequate price competition. However, the FAA reserves the right to request additional information (Other than Certified Cost or Pricing Data) if necessary to make an adequate determination of reasonableness.” *AR* Tab 5, § L.13.3.2.

The FAA received proposals from five offerors for the unrestricted track competition. *AR* Tab 27, at ¶ 6. In accordance with the terms of the solicitation, the contracting officer conducted an initial compliance review. *Id.* at ¶ 7; *AR* Tab 5, §§ L.11 and M.2.2.1. Of the five offerors, he ultimately found four offerors to possess the required relevant experience. *AR* Tab 23 at 28; *AR* Tab 5, Table § M.4.1.1.

At the conclusion of the technical and price evaluations, the Source Evaluation Board (“SEB”) determined that Guidehouse had submitted one of the two highest rated “Excellent” technical proposals, but its price was the second highest among the four eligible offerors. *AR* Tab 23, Table 7 at 28. Based on the evaluation record, the Source Selection Official (“SSO”) agreed with the recommendation of the SEB and directed the contracting officer to award the unrestricted contract to EY, as its proposal received the highest possible ratings while offering the second lowest price. *AR* Tab 24 at 3; *AR* Tab 27, at ¶ 14. In other

words, Guidehouse did not receive the award because its price was higher than EY's price. *Id.*

III. Discussion

Guidehouse challenges as improper and irrational the FAA's evaluation of the price, past performance, and technical factors with respect to EY's proposal, as well as the evaluation of its own technical proposal. Guidehouse also challenges the FAA's best value determination as flawed.

A. The Solicitation Reflected The AMS Preference for Determining Price Reasonableness Based on Adequate Price Competition

Guidehouse argues that the FAA's failure to analyze EY's offer for price realism was arbitrary and capricious because it allegedly was contrary to the solicitation requirements, which authorized the FAA to conduct a comprehensive price realism analysis. *Protest* at 1, 12; *Comments* at 3. Guidehouse further argues that the solicitation was amended to incorporate price realism language into § M.2.1.2, signaling "that low prices would be analyzed wherever they could negatively affect performance." *Revised and Supplemental Protest* at 14, citing *AR* Tab 3A at Q. 73.

The solicitation reflects the AMS preference for price reasonableness to be determined based on adequate price competition. AMS § 3.2.3.2. In this regard, the AMS favors "the review of price without evaluating separate cost elements and profit/fee" where there is adequate competition. *Id.*; *Protest of Leader Communications, Inc.*, 14-ODRA-00705.⁴ Adequate price competition may exist when, for example, "two or more responsible offerors competing independently submit priced offers responsive to the FAA's requirements." *AMS Procurement Guidance* T3.2.3.A.3.a, Cost and Price Methodology (7/2019); *Protest of Bionetics*

⁴ The FAA Procurement Pricing Handbook § 5.1, "Price Analysis Overview," also provides: "Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Price analysis is the preferred method for evaluating competitive proposals [FAA AMS 3.2.3]."

Corporation, 14-ODRA-00696 (two or more sources considered adequate competition).

Where the record demonstrates that there is adequate price competition that allows for a determination of price reasonableness, unless the solicitation expressly promises otherwise, there is no obligation to examine further any specific elements of a proposed price. *Protest of Leader Communications, Inc., supra.*⁵ Under the AMS, techniques used in performing a price reasonableness analysis include comparing proposed prices to each other (considering such factors as the range of prices and the performance experience of the offerors), as well as comparing proposed prices to an independent cost estimate. *Procurement Pricing Handbook* § 5.2. A comparison of proposed prices to an appropriate independent cost estimate can occur in addition to other analyses, or when other methods are not feasible. *Id.* at § 5.2.5.

Consistent with the AMS preference for analyzing price reasonableness based on adequate competition, the solicitation contemplated conducting a price realism only if necessary. AMS § 3.2.3.2; *AR* Tab 5, SIR §§ M.5.2 and M.5.2. Specifically, the solicitation explained that the evaluators would consider price reasonableness first, and “if” that raised questions, the FAA had “discretion” to seek more information needed for a price realism analysis.⁶ *AR* Tab 5, SIR § M.5.2. Section M.5.3 reiterated that the FAA could conduct a price realism analysis “at its discretion.” *Id.* at § M.5.3. Moreover, prior to the closing date for proposals, the FAA specifically rejected the suggestion from one potential offeror that price

⁵ The Procurement Pricing Handbook further states: “Once adequate price competition is determined to exist, price competition between proposals should be relatively elementary to compare.” *Id.* at § 5.2.1.

⁶ A determination that proposed pricing is reasonable based on adequate competition is not the same as a price realism analysis, which can include the review of cost and pricing data beyond that which was provided in the price proposal. *AR* Tab 5, §§ M.5.2 and M.5.3. The purpose of a price realism analysis “is to ensure that the prices proposed are not so low that contract performance is put at risk from either a technical and/or cost perspective.” *AR* Tab 5, §§ L.13.3.2 and M.5.3.

realism be mandatory.⁷ To do otherwise would be contrary to the AMS preference for analyzing price reasonableness based on adequate competition. AMS § 3.2.3.2. The ODRA, thus, finds no basis in AMS policy, the solicitation, or fact that supports Guidehouse’s assertion that the solicitation required a comprehensive realism analysis. *Protest* at 1, 12; *Comments* at 3.

B. The FAA’s Price Analysis Had A Rational Basis

Guidehouse contends that, in addition to the price reasonableness analysis, the FAA should have conducted a price realism analysis of EY’s price proposal and the failure to do so was an abuse of discretion. *Revised and Supplemental Protest* at 12, citing § M.3.3. Specifically, Guidehouse asserts that the FAA’s price analysis was flawed because it “manipulated the data available to find E&Y’s price realistic while ignoring the risk in E&Y’s proposal.” *Guidehouse Comments* at 5. Guidehouse contends that the Product Team’s failure to recognize the risks posed by EY’s “significantly low labor rates” and conduct a price realism analysis was arbitrary and capricious. *Protest* at 2; *Revised and Supplemental Protest* at 12; *Comments* at 6-11.

⁷ Prior to the deadline for submitting proposals, Amendment 1 provided potential offerors with all questions and answers generated from the solicitation. *AR* Tab 3A. One of the questions expressly recognized that the FAA had not committed to performing a price realism analysis. It asked:

The SIR reserves the right at its discretion to penalize unrealistic proposals (§ M.2.1.2 and § M.5.3), but does not commit to performance of a realism analysis. Without a price realism analysis, the source selection authority may be unaware of the potential performance risks caused by unrealistic prices To protect itself from such a performance risk, will the Agency commit to performing a realism analysis? Such a commitment also is consistent with the Agency’s obligations in AMS 3.2.2.3.1.2.3, which requires each SIR to contain the specific evaluation criteria to be used to evaluate Offeror submittals. This will ensure all Offerors are competing against the same evaluation standards.

AR Tab 3A (emphasis added). In response, the FAA did *not* commit to doing a price realism analysis, but rather stated only that the “FAA will not change the requirements of the SIR, although Section M.2.1.2 has been updated for consistency.” *AR* Tab 3A.

1. The Price Reasonableness Determination was Supported By Adequate Competition

In comparing the offerors' price proposals, the Price Evaluation Team ("PET") relied on the median of the prices from the four offerors as the basis for its comparison. *AR* Tab 17 at 15; *AR* Tab 27 at ¶ 12. Although the ODRA has fully reviewed and considered the statistical analysis that the PET used to compare the prices, a lengthy recitation is unnecessary for this protest. The record establishes adequate price competition because the FAA received four proposals in the unrestricted track from experienced offerors who satisfied the solicitation's requirements. *AR* Tab 5, Table M.4.1.1; *AR* Tab 14; *AR* Tab 23, Table 7 at 28. In accordance with the solicitation and the AMS, the PET determined price reasonableness by comparing each offeror's Total Evaluated Price (the TEP) to those proposed by other offerors, but it did not rely on the IGCE (as discussed below). *AR* Tab 17 at 15; *see also AMS Procurement Guidance* T.3.2.3.A.1.c.

The spread of the offers and their relationship to each other demonstrates a rational basis for the PET's determination. Guidehouse's proposal was the second highest priced proposal and was included among the three price proposals that were clustered more closely together. *AR* Tab 17 at 16. EY's proposal price was not the highest, nor was it the lowest. *Id.* Instead, it fell squarely in the middle of the cluster of the three lowest prices. *Id.* Given these circumstances, the solicitation terms, and AMS policy and guidance, the ODRA finds that the PET had a rational basis to conclude that adequate competition supported its finding that EY's proposed price was fair and reasonable.

2. The Flawed IGCE Does Not Render the Price Evaluation Irrational

Guidehouse questions why the Product Team essentially abandoned the IGCE after finding that it exceeded the price of all proposals received by tens of millions of dollars. *Revised and Supplemental Protest* at 11. Acknowledging the significant disparities between all of the price proposals and the IGCE, the PET

Report noted that the IGCE can be used as a benchmark for reasonableness, but it is not the sole determinant of reasonableness in a competitive market. *Id.* at 16. Specifically, the IGCE can be used to establish price reasonableness, provided that it “is reliable and can be used as a standard for comparison.” *Procurement Pricing Handbook* at § 5.2.5. As that quote makes clear, an IGCE is not a sacrosanct standard of measure if it is found unreliable.⁸ The PET viewed the relative proximity of eligible offerors’ prices in this case to be “a better indication of competition in the market lowering the price” from the IGCE. *AR* Tab 19 at 16. This approach to finding price reasonableness is entirely consistent with AMS Procurement Guidance,⁹ and the ODRA finds that the PET’s rejection of the IGCE in favor of the proposed pricing was rational and consistent with the AMS policy and guidance.

3. The Price Evaluation Of The Restricted Track Is Not Germane.

In support of its allegations of unrealistic pricing, Guidehouse uses its own calculations and compares its composite labor rate and that of the restricted small business awardee to EY’s composite labor rate, noting it is [DELETED]% lower than its rate and [DELETED]% lower than the small business awardee’s rate. *Protest* at 11. Guidehouse further contends that the price realism evaluation

⁸ See also *Matter of Dewberry Crawford Group; Partner 4 Recovery*, 2018 U.S. Comp. Gen. LEXIS 306; 2018 Comp. Gen. Proc. Dec. ¶297 (flawed IGCE did not preclude evaluators from using another price analysis technique to determine price reasonableness, where there was adequate price competition); *AMTIS-Advantage, LLC*, B-411623, B-411623.2, Sept. 16, 2015, 2015 Comp. Gen. Proc. Dec. ¶ 360 at 11 (flawed IGCE creates no competitive prejudice where agency also used other price analysis techniques to determine price reasonableness). Furthermore, the PET’s comparison of GT’s prices against the averages of GSA schedule contracts is consistent with techniques authorized by AMS Procurement Guidance. *Protest of Excelis, Inc.*, 15-ODRA-00727; *Procurement Pricing Handbook* § 5.2.2, “Published Price Comparison.”

⁹ In this regard, the Procurement Pricing Handbook § 5.2.1, Comparison of Competitive Bids, states:

The analyst should compare the current price with prices of competing bids or offers for the procurement if adequate price competition exists. To determine whether adequate price competition exists, the analyst may examine proposed prices, the range of prices offered by competing companies, the production or performance experience of the offerors, and exceptions taken by any offeror to the specifications, delivery schedule, or other terms of the solicitation.

conducted under the restricted track is relevant because it demonstrates inconsistent treatment under the same solicitation. *Comments* at 6, 9. The ODRA finds the comparison of the price evaluation in the small business competition to that of the unrestricted competition does not demonstrate that the price reasonableness evaluation of EY's price was flawed. First, the PET evaluated the pricing of these groups separately because they were not competing against each other, and were subject to different evaluation criteria. *AR* Tab 17 at 3; *AR* Tab 27, at ¶ 12. Second, the PET decided to perform a price realism analysis of one of the small business price proposals, due to a recommendation of the SEB Chair based on questions of performance risk posed by financial solvency. That analysis had no impact on the price evaluation of the unrestricted offerors. *AR* Tab 17 at 5, 16. *AR* Tab 27, at ¶ 12; *AR* Tab 23 at 61-62. Indeed, there is no indication of any evaluation concerns of performance risk relative to the unrestricted offerors. *AR* Tab 25 at 8, 18-21, 29.

C. Notification of the Chief Financial Officer that Pricing Exceeded the IGCE by More Than 15%

Guidehouse further argues that the FAA failed to comply with Chief Financial Officer ("CFO") guidelines that require additional scrutiny be given to an offer that deviates from the IGCE by more than 15%. *Revised and Supplemental Protest* at 1; 13-14, citing *AR* Tab 5, § M.2.1.2; § M.5.3. AMS Procurement Guidance T3.2.3.A.2.g states that when the difference between the price offered and the IGCE is greater than 15%, the contracting officer should notify the program official.¹⁰ Although the PET was aware of this guidance, the contracting officer did

¹⁰ In pertinent part, the guidance states: "When there are differences greater than 15% between the price of the offer proposed for award and the IGCE, the CO should notify the program official for appropriate remedial actions." These "remedial actions" would relate to the applicability of the IGCE to the procurement, inasmuch as the program office is responsible for preparing an IGCE for procurement actions over \$150,000 and the IGCE accompanies the procurement request package that initiates the acquisition. *AMS Procurement Guidance* T.3.2.3.A.2. A procurement request package is used to define the requestor's requirements and it is used by the contracting officer to plan and implement the procurement process. *AMS Procurement Guidance* T.3.2.1.A.

not provide such notification to the CFO prior to award to EY. *AR* Tab 17 at 11. During the protest proceedings, however, the contracting officer submitted to the Office of Financial Analysis a memorandum explaining and reconciling the difference between the EFS IGCE and EY's proposed price. *AR* Tab 30. Subsequently, on July 19, 2019, the CFO issued a revised approval for the EFS program to solicit proposals based on that memorandum. *AR* Tab 31.

The ODRA notes that the express language in AMS Procurement Guidance § T3.2.3.A.2.g does not make notification of the program official mandatory, and moreover, the purpose of the guidance is to enhance the FAA's own fiscal control and oversight. *AMS Procurement Guidance* T3.2.1.4.A.1.a; *Procurement Pricing Handbook* § 5.2.5, "Comparisons to Independent Government Cost Estimate" (emphasis added).¹¹ There is no evidence in the record that the timing of the CFO's notification had any prejudicial impact on any offeror.

D. Evaluation of EY's Past Performance Had A Rational Basis

Guidehouse alleges that the FAA failed to consider negative past performance information relative to EY and thus the past performance evaluation of EY was improper. *Protest* 12-13. Guidehouse argues, without any evidentiary support, that EY had "negative performance on relevant FAA contracts" of which the FAA was fully aware and, among other things, got poor reviews of the deliverables it produced. *Protest* at 12-13. Guidehouse also asserts that the FAA's low risk rating for EY was unreasonable because the FAA failed to look behind the adjectival ratings to properly distinguish its performance. *Protest* at 12. The ODRA finds Guidehouse's claims that the FAA neglected to consider negative reviews of EY's past performance to be unpersuasive, because they lack support in the record. *Protest of Leader Communications, Inc.*, 14-ODRA-00705.

¹¹ While use of the word "should" allows for the exercise of discretion "to adopt different approaches consistent with applicable law and AMS policy," contracting personnel still are expected to make reasoned decisions and "document, to an appropriate extent, the rational basis for adopting a different approach." *Protest of Adsystech, Inc.*, 09-ODRA-00508.

As required by solicitation § L.11, EY's proposal identified three relevant contracts with a narrative explaining the work and its similarity to applicable EFS work areas. *AR* Tab 5 at § L.11.2; *AR* Tabs 28 and 29. The Past Performance Evaluation Team ("PPET") found that EY met the requirements pursuant to § M.6.1, because all of its past performance references provided a rating of "Satisfactory" for every item questioned. *AR* Tab 7C at 7-12. Inasmuch as the record does not support Guidehouse's argument that negative past performance information exists for EY, there would be no basis for the evaluators to look "behind the offerors' facially comparable adjectival ratings" to investigate otherwise. *Protest* at 13; *AR* Tab 7C at 7-12; *AR* Tab 28. Also, the record shows that the PPET evaluated EY's past performance in accordance with the stated evaluation criteria in the solicitation. Consistent with the solicitation definition of a "Meets" rating, i.e., where all past performance references have provided a rating of "Satisfactory" for the requirement, the FAA rated EY as Low Risk, indicating a high likelihood that it can and will perform in the manner described in its proposal. *AR* Tab 5 at §.6.1; *AR* Tab 9 at 25; *AR* Tab 14 at 8.

The past performance evaluation of EY as Low Risk is supported by the record and consistent with the evaluation criteria in § M.6 of the solicitation. The ODRA generally will not sustain an evaluation protest unless the preponderance of the evidence shows that the evaluation lacks a rational basis or was inconsistent with the solicitation, the AMS, or law. *Protest of Adacel Systems, Inc.*, 17-ODRA-00822.

E. Evaluation of Strengths in Guidehouse's and EY's Technical Proposals

Guidehouse challenges the FAA's assignments of strengths to its technical proposal, and to that of EY, as unreasonable and unfair. *Revised and Supplemental Protest* at 17-19, 20-21. "It is well established that the evaluation of technical proposals is a matter within the sound discretion of the contracting agency, since the Agency is responsible for defining its needs." *Carahsoft Techs. Corp & Avue Techs. Corp.*, 08-TSA-034. Technical evaluators have considerable latitude in

assigning ratings, which reflect the evaluators' judgment of a proposal's merits. *See Protest of Universal Sys. & Tech., Inc.*, 01-ODRA-00179 (denying protest of technical evaluation where evaluators' findings had a rational basis and were consistent with the stated evaluation scheme). Mere disagreement with the evaluation does not establish the evaluation conclusion was irrational, where it was conducted pursuant to the solicitation criteria, the evaluation plan and the AMS. *Protests of Global Systems Technologies, Inc.*, 06-ODRA-00396 and 07-ODRA-00405 (Consolidated) (citing *Protest of Crown Consulting, Inc.*, 01-ODRA-00181).

1. Technical Evaluation of EY

Guidehouse argues that the FAA's technical evaluators unreasonably assigned a strength to EY's technical proposal for its ability to retain personnel. *Revised and Supplemental Protest* at 20-21. Guidehouse relies on allegedly low labor rates that EY provided in its price proposal. *Id.*

In accordance with the solicitation, the Technical Evaluation Team ("TET") did not consider EY's pricing information during the technical evaluation. *AR* Tab 16 at 24-26. The solicitation provided that an offeror's technical capability was to be evaluated based only on technical information in its Volume II, and not the price information contained in Volume III. *AR* Tab 5 at § M.4.2. In this regard, solicitation section M.4.2.1.1 provides that Factor 1, Staffing, Management, and Quality Control would be evaluated based on Volume II, Section 1 of the offeror's proposal. *Id.* Moreover, the solicitation expressly cautions offerors that their proposals would not be evaluated if they included pricing information in the technical volume of their proposals. *AR* Tab 5 at § M.2.2.1. In fact, for the TET to consider EY's labor rates would have been contrary to the solicitation's evaluation criteria. *Id.*

The TET Report shows the strength assigned to EY for its ability to retain qualified staff was based on several non-price related considerations that were highlighted in the narrative of EY's technical proposal. *AR* Tab 16 at 12-13. That narrative, among other things, a retention rate of [DELETED]% within its federal

advisory practice, awards and recognition as a “Best Place” to work, and a positive work environment due, in part, to competitive compensation packages offered to employees. *AR* Tab 7A at 12. The record supports the strength assigned to EY in this regard, and it is consistent with the solicitation’s definition of a strength, i.e., an “aspect of a proposal that ultimately represents an added benefit to the Government and is expected to increase the quality of the Offeror’s performance.” *AR* Tab 5 at § M.4.2.2.

2. Technical Evaluation of Guidehouse

Guidehouse argues that the FAA disparately evaluated Guidehouse’s strengths under the Technical Factor, thereby making the evaluation arbitrary and capricious. *Guidehouse Comments* at 11-13. Guidehouse contends that the evaluation overlooked several valuable and significant benefits offered by its proposal, inconsistently assigning strengths to other offerors who proposed the same or similar features, using a “check a box” approach rather than considering “the extent to which” the proposed approach met the criteria. *Protest* at 15-16; *Revised and Supplemental Protest* at 2. The ODRA finds no merit in Guidehouse’s contentions.

As Guidehouse recognizes, “successful protests of the failure to award strengths commonly rely on disparate treatment theories or on failure-to-consider arguments.” *Revised and Supplemental Protest* at 16 (citing *Protest of Spatial Front, Inc.*, 17-ODRA-00803). As discussed below, however, material differences between the proposals demonstrate that disparate treatment has not occurred, and that a rational basis supports the technical evaluation.

a. Staff Retainage

Guidehouse complains that it did not receive a strength for its methods to retain staff, and asserts that its proposal is similar to EY’s proposal because they both identified awards and benefits that will help in retaining staff. *Revised and Supplemental Protest* at 17. EY, however, included actual, high rates of retention

on a specific contract and within its federal advisory practice as a whole. *AR* Tab 7A at 12. Guidehouse did not state any specific retention rate. *AR* Tab 8A at 11. The TET cited EY's retention rates in support of finding a strength. *AR* Tab 16 at 12. The ODRA finds that disparate treatment is not present and the conclusions are supported by a rational basis in the record.

b. Identifying and Mitigating Risk

Guidehouse expansively states that it should have received a strength for its risk identification and mitigation plans (*Revised and Supplemental Protest* at 18) because other offerors received such strengths. The TET, however, did not award EY a general strength for its risk planning. Instead, the TET awarded EY a strength for specifically recognizing three risks associated with transitioning work under the new contract. *AR* Tab 16 at 13. Guidehouse acknowledges that it did not identify such risks in its proposal nor did it state plans to mitigate such risks. *Guidehouse Comments* at 12; *see also AR* Tab 8A at 19-20. The ODRA verified that EY's proposal identified such risks (*AR* Tab 7A at 21-23), and accordingly, finds that the two proposals are materially different. The ODRA further finds that the TET had a rational basis for the evaluation on this point.

c. Work Area 2

Guidehouse complains that it did not receive a strength for "Work Area 2," which relates to internal controls under § 3.2 of the Statement of Work. *Revised and Supplemental Protest* at 19-20. Guidehouse observes that several offerors—in both the restricted and unrestricted tracks—received a strength for this item. *Id.* at 19. Guidehouse focuses its argument, however, on its experience with the "Committee of Sponsoring Organizations' (COSO) Internal Control Framework." *Id.* Noting that an offeror in the restricted track competition received a strength for using COSO Internal Control Framework, Guidehouse argues that it too should have received a strength.

Undeniably, the offeror in the restricted track competition received its strength in part due to its use of the COSO Internal Control Framework. *See AR*

Tab 16 at 58. But Guidehouse was not in competition with offerors in the restricted competition, and none of the unrestricted track offerors received a strength for reliance on the COSO Internal Control Framework. Of particular importance, both Guidehouse and EY refer to COSO Internal Control Framework in their proposals. *Compare AR* Tab 7A at 35 (EY) *with* Tab 8A, section 2, at 7 (Guidehouse). EY's strength in Work Area 2, however, was not supported by its COSO reference. The TET relied instead on EY's explanation of three proprietary tools it would use. *AR* Tab 16 at 15. The ODRA finds, therefore, that Guidehouse was not treated disparately for Work Area 2 in relationship to other offerors on the unrestricted track.

3. Conclusion Regarding the Assignment of Strengths

Guidehouse has not shown by the preponderance of the evidence that the assignment of strengths lacked a rational basis, was tainted by disparate treatment, or otherwise was improper. This aspect of the protest should be denied.

F. Overarching Allegations Regarding the Technical Evaluation and Trade-off Analysis Lack Merit

Guidehouse broadly alleges that the evaluation method in general violated the solicitation and "basic tenets of procurement law," as derived from decisions of the Government Accountability Office ("GAO"). *Revised and Supplemental Protest* at 21-22; *Guidehouse Comments* at 1. Guidehouse argues that the method employed was a "mechanical" exercise that failed to consider "the degree to which" and the "extent to which" the evaluation criteria would be met. *Revised and Supplemental Protest* at 21-22.

1. The AMS and the Solicitation Provide the Applicable Standard

Guidehouse cites to the GAO for the principle that best value determinations require an evaluation process that is not focused on mere technical acceptability, but rather, "should be further differentiated to distinguish ... relative quality under each stated evaluation factor by considering *the degree to which* technically

acceptable quotations exceed the stated minimum requirements or will better satisfy the agency’s needs.” *Revised and Supplemental Protest* at 21-22 (citing *U.S. Info. Techs. Corp.*, B-404357, Feb. 2, 2011, 2011 CPD ¶ 74) (emphasis added by Guidehouse). Guidehouse also relies on GAO precedent for the proposition that “adjectival ratings are merely guides for intelligent decision-making and should not be the sole basis for a source selection decision.” *Revised and Supplemental Protest* at 24, citing *Apogee Eng’g, LLC*, B-414829.2, Feb. 21, 2019, 2019 CPD ¶ 85; *Guidehouse Comments* at 14.

The ODRA is not bound by the GAO’s bid protests decisions. *See e.g., Protest of International Services, Inc.*, 02-ODRA-00224. The ODRA previously has dealt with similar arguments and rejected, as inconsistent with the AMS, GAO decisions that degrade the usefulness of adjectival classifications reached after exhaustive assessments of strengths and weaknesses. *Protest of Apptis, Inc.*, 10-ODRA-00535 at 93 (Public Version). In *Apptis*, the ODRA established the precedent that there is no affirmative obligation in the AMS to analyze or compare equally rated proposals on a strength-by-strength basis if not required by the solicitation’s evaluation criteria. *Id.* Instead, in reviewing such challenges, the ODRA focuses on “whether the evaluation plan and criteria were followed” in a consistent manner that provides an assessment of a proposal’s overall quality and a rational selection decision.¹² *Protest of Apptis, Inc.*, 10-ODRA-00535.¹³

¹² To impose a more rigid standard would not promote the fundamental AMS principles of focusing on “key discriminators,” promoting discretion given to procurement officials, and providing “streamlined methods ... to conduct timely and cost-effective procurements.” AMS § 3.1.3, Fundamental Principles (7/2013).

¹³ More specifically, in *Apptis*, the ODRA addressed a protester’s argument that a “rigid and mechanical” evaluation method did not “permit the evaluators to ‘capture degrees of excellence or degrees of goodness in the offeror’s proposal.’” *Apptis, supra* at 92 (public version). The ODRA rejected the argument, and stated:

[Intervenor] directs the ODRA to AMS § 3.2.2.3.1.2.3., which grants product teams substantial latitude in structuring the evaluation method. That section ... does not require any specific level of precision – or “degrees of goodness” – that must be included in the evaluation criteria. The policy instead requires product teams to establish evaluation criteria and an evaluation plan that must be “concise and tailored to the specific needs of the procurement.” AMS § 3.2.2.3.1.2.3. Moreover, the

2. The Product Team Followed Both the Solicitation and the Evaluation Plan

The solicitation’s evaluation criteria and the technical evaluation plan was structured to give evaluators the opportunity to make qualitative judgments about strengths and weaknesses, which were “rolled-up” into a final assessment of the technical proposals overall quality. *AR* Tab 9 at 13-14; *AR* Tab 5 at § M.4.2.2. The evaluation plan, which the TET followed, required the TET to assign factor ratings, such as “Good” or “Excellent,” based on the consensus of all evaluators on the team, considering the “combined impact of strengths and weaknesses agreed upon and documented at the factor level.” *AR* Tab 9 at 13. In so doing, the TET was required to “rate each factor individually, then—based on the factor ratings and the relative importance thereof – assign a rating to the proposal as a whole.” *AR* Tab 5 at § M.4.2. In pertinent part, the TET’s evaluation of “the extent to which” the proposal demonstrated technical merit relative to Technical Factors 1 and 2 was captured in the adjectival rating it assigned for each factor and for the overall technical proposal. *AR* Tab 5 at § M.4.2.

The record shows that the TET complied with the evaluation criteria and evaluation plan, providing detailed explanations in support of its findings of strengths and weaknesses, as well as the basis for the adjectival ratings, i.e., more than just checking the box. *AR* Tab 16 at 10-17; 23-30. In fact, the level of detail and internal consistency in the TET’s report demonstrates nothing short of a

ODRA has never expressly adopted the GAO’s standard, quoted above, which de-emphasizes the use of numeric scores to ensure a considered judgment based on actual qualitative differences in the proposals. The ODRA has focused instead on whether the evaluation plan and criteria were followed, while observing that “the nature and significance of individual strengths and weaknesses [were] noted by the evaluators on an overall qualitative basis.” *Consolidated Protests of Consecutive Weather, Eye Weather Windsor Enterprises and IBEX Group, Inc.*, 02-ODRA-00250, 02-ODRA-00251, 02-ODRA-00252 and 02-ODRA-00254 (Consolidated). In other words, the ODRA properly focuses on whether a rational evaluation process was followed consistently.

Id. (citations omitted).

detailed review and thorough understanding of the relative proposals. *See generally* AR Tab 16.

3. A Rational Basis Supports the Trade-off Analysis and the Award Decision

In accordance with solicitation § M.3.3, the FAA made the award determination considering which proposal represented the best value combination of price and non-price factors, with the non-price factor more important than the price factor. AR Tab 5 at § M.3.3; AR Tab 23 at 29-31; Table 7. The Source Selection Board's tradeoff analysis recommended EY as the best value based on the following evaluation results:

	Volume 2 (Technical Capability)	Volume 3 (Price)	Volume 4 (Past Performance)	Volume 5 (Compliance)
EY	Excellent <ul style="list-style-type: none"> Factor 1 – Excellent Factor 2 – Excellent 	\$134,424,783	Low Risk	Fully Compliant
Guidehouse	Excellent <ul style="list-style-type: none"> Factor 1 – Excellent Factor 2 – Excellent 	\$150,903,832	Low Risk	Fully Compliant
Offeror A	Good <ul style="list-style-type: none"> Factor 1 – Good Factor 2 – Excellent 	\$169,180,311 High Outlier	Low Risk	Only Compliant with Sub- Contracting Plan Requirement
Offeror B	Good <ul style="list-style-type: none"> Factor 1 – Good Factor 2 – Good 	\$128,689,632	Low Risk	Fully Compliant

AR Tab 23 at 28; Table 7.

The table provides several insights. First, inasmuch as EY's award price was not the lowest, the record does not support Guidehouse's contention that the method of award was converted improperly to one based on low price, technically acceptable. *See Protest* at 2, 13-14; *see also Revised and Supplemental Protest* at 24.¹⁴ Second, although both EY and Guidehouse provided top-notch proposals that

¹⁴ Finally, the ODRA finds no merit in Guidehouse's claim that by not making a second award to Guidehouse, the FAA abused its discretion by not recognizing that a second award was in the best interests of the FAA, inasmuch as the solicitation § M.4 allowed for that possibility. *Protest* at 3, 17-18; *Revised and Supplemental Protest* at 3, 25; *Guidehouse Comments* at 14-15. In this regard, the solicitation provides, "the Government reserves the right to award a single contract, two contracts, more than two contracts, or to not make any award." AR Tab 5 at § M.4. Guidehouse provides no legal authority or facts to support this claim, and the ODRA thus finds it baseless.

achieved the best evaluation ratings, Guidehouse's TEP was \$16.5 million higher than EY's. Given the thorough, comprehensive, and sound technical evaluation, described in both the technical evaluation report (*AR* Tab 16) and the best value recommendation (*AR* Tab 23), it is evident that the Source Evaluation Board had a rational basis to conclude, "It is not in the FAA's interest to pay \$16M more for a solution of equal merit and risk." *AR* Tab 23 at 29. Further, the Source Selection Official, based on an "independent assessment of the evaluation results," determined, "It is in the FAA's interest to award to EY over Offerors whose proposals demonstrated equal merit [Guidehouse] or lesser merit with respect to Technical Capability and higher prices." *AR* Tab 24 at 2-3. On this record, the ODRA finds that the ultimate selection decision is well grounded in the solicitation, the proposals, and the evaluation, and is supported by a rational basis.

IV. Conclusion

For the reasons set forth above, the ODRA recommends that Guidehouse's protests be denied.

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Marie A. Collins
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition