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Decision

Matter of: Intelsat General Corporation

File: B-412097; B-412097.2

Date: December 23, 2015

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DIGEST

1. Protest alleging that the agency engaged in misleading discussions is sustained where the record shows that the agency failed to inform the protester of a change in its interpretation of the solicitation requirements after the agency held discussions.
 2. Protest challenging the agency's evaluation of the awardee's proposal is sustained, where the record demonstrates that the evaluation was neither reasonable nor consistent with the terms of the solicitation regarding requirements for satellite coverage and capacity, and where the agency unreasonably concluded that the awardee had provided required documentation.
 3. Protest challenging the agency's price realism analysis is sustained where the awardee's proposal did not meet the solicitation's technical requirements for required documentation and complete regional satellite coverage.
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DECISION

Intelsat General Corporation, of McLean, Virginia, protests the award of a contract to Segovia, Inc., of Reston, Virginia, doing business as Inmarsat Government,¹ by

¹ In order to differentiate the similar corporate names, throughout this decision we have used "Segovia" to denote the awardee.

the Defense Information Systems Agency (DISA), under request for proposals (RFP) No. HC1013-14-R-0004 for comprehensive commercial satellite services (known as the commercial satellite services contract or CSSC) for the United States Navy. Intelsat challenges the agency's evaluation of the awardee and claims that the awardee's proposal failed to materially conform to the RFP.

We sustain the protest.

BACKGROUND

DISA issued the solicitation on September 15, 2014, under the negotiated procurement procedures of Federal Acquisition Regulation (FAR) Part 15 to obtain worldwide end-to-end commercial satellite telecommunications services for the U.S. Navy. RFP at 6. The RFP anticipated the award of a single indefinite-delivery, indefinite-quantity contract to the offeror whose proposal presented the best value to the government. Id. at 101-102. The RFP required offerors to propose fixed unit pricing, which DISA would use to issue fixed-price task orders. Id. at 4, 90. The solicitation provided for evaluation of proposals under four factors: (1) information assurance, (2) technical/management, (3) past performance, and (4) cost/price factors. Id. at 102, 107. The information assurance factor was to be evaluated on a pass/fail basis, and the three remaining factors were listed in descending order of importance. Id. The non-price evaluation factors, considered together, were considerably more important than price. Id. at 103. The technical/management factor consisted of three subfactors in decreasing order of importance: (1) space segment requirements, (2) end-to-end design solution, and (3) terrestrial services requirements. Id. at 102.

The RFP established geographic service regions and specified bandwidths that an offeror could use to provide broadband satellite coverage within those regions. For the land areas, DISA defined coverage regions by listing the latitude and longitude points. RFP at 14-17, performance work statement (PWS) § 6.2.8.4. The land regions and their general coverage areas were as follows: A (contiguous United States), AF (Africa), AG (Middle East), E (Europe), G (Arabian peninsula), H (west coast of United States, Hawaii and section of North Pacific Ocean), NA (North Atlantic), SA (South America), and WP (Australia, Indonesia, and sections of the Pacific and Indian oceans). Id. at 16, fig. 4; id. at 14-15, PWS §§ 6.2.8.4.1-6.2.8.4.9. The solicitation provided that for the nine land regions, "[t]he basic [coverage] requirement is for C, Ka, Ku, and/or X-band bandwidth."² Id. at 14-15; id. at 15-16, PWS §§ 6.2.8.4.1-6.2.8.4.9.

² C, Ka, Ku, and X-band are bandwidths within the microwave band of the electromagnetic spectrum.

For the oceans areas, the solicitation created four overlapping regions, which generally provided coverage as follows: S1 (North and South Atlantic Oceans), S2 (Indian Ocean), S3 (eastern portion of the North and South Pacific Oceans), and S4 (western portion of the North and South Pacific Oceans). Id. at 17, fig. 5; id. at 15-16, PWS §§ 6.2.8.4.10-6.2.8.4.13. For these water regions, offerors were informed that “[t]he basic [coverage] requirement is for C, Ka, and/or X-band bandwidth,” i.e., Ku-band was part of the basic requirement for land regions but not water regions. RFP at 15-16.

As to each combination of the regions above and the basic requirement for bandwidth, the RFP further provided a modem data rate³ and estimated capacity⁴ by variant.⁵ Id., Appendix II—CSSC Bandwidth Estimates. The RFP further instructed offerors to propose baseline services to meet current requirements and non-baseline services to meet optional surge requirements. RFP at 11-12.

For example, as shown below in Figure 1, for the C-band bandwidth in region S4 under variant⁶ AN/USC-69(V)2 FLV, the baseline requirement was for a 5 x 2.048 Mbps, with an estimated capacity of 22.2 Mhz, and a non-baseline capacity of zero.⁷ Id.

³ A modem data rate refers to the volume of data that can be transmitted per fixed time unit. Here, data rates were specified in terms of (1) Mbps, or megabits per second or (2) Kbps, or kilobits per second (where a megabit is equal to one million bits).

⁴ The agency has provided an estimate of the capacity in megahertz (MHz), which is an electromagnetic wave frequency equal to one million hertz, i.e., one million cycles per second.

⁵ The baseline and non-baseline data rates were provided for each fiscal year 2015 through 2019. RFP, Appendix II—CSSC Bandwidth Estimates. Variation in baseline data rates between fiscal years is not relevant to the protest.

⁶ The variant refers to the type of naval shipboard terminal.

⁷ The RFP stated that offerors “shall provide solutions which deliver the user terminal data rate requirements shown in Appendix II – CSSC Bandwidth Estimates . . .” RFP at 11, PWS § 6.2.1.1 (baseline bandwidth requirements), while for non-baseline services, offerors were simply required to be prepared to accommodate future requests for capacity “to support short term, heightened operational tempos, or surge requirements for specific operational regions.” RFP at 12, PWS § 6.2.1.2.

Figure 1. C-Band Bandwidth in Region S4.

C-BAND	Region S4			
	Baseline		Non-baseline	
Variant	Modem Data Rate (Mbps)	Estimated Capacity (MHz)	Modem Data Rate (Mbps)	Estimated Capacity (MHz)
AN/USC-69(V)2 FLV	5 x 2.048Mbps	22.2	0	0
AN/USC-69(V)2 FLV	0	0	0	0
WSC-8	3 x 4.096Mbps	26.64	4.096Mbps	8.88
NAVO SEATEL (INBOUND)	4 x 512Kbps	0.5	0	0
NAVO SEATEL (OUTBOUND)	4 x 2.048Mbps	1.9	0	0
TOTAL		51.24		8.88

Source: RFP, Appendix II – CSSC Bandwidth Estimates.

The PWS set forth requirements for complete regional coverage and specific bandwidth that cross-referenced other sections of the RFP. In describing the required satellite coverage, the PWS provided that an offeror’s space segment solution:

[S]hall cover the defined coverage area in accordance with Figure 4 – CSSC Operational Regions Coverage Graphic, Figure 5 – CSSC Blue Water Operational Regions Coverage Graphic, Appendix II – CSSC Bandwidth Estimates, and specific coverage area for Regions A, AF, AG, E, G, H, NA, SA, WP, S1, S2, S3, and S4, as defined in [PWS] Section 6.2.8.4, Operating Regions.

RFP at 13, PWS § 6.2.8.

The RFP informed offerors that the agency would evaluate the first technical/management subfactor, space segment requirements, according to the following elements:

The Government will evaluate the extent to which the offeror’s technical solution demonstrates a sound, complete, and adequate plan to meet the requirements below:

- (1) Element 1 – Satellite Capacity. The offeror[’]s ability to provide satellite resources in sufficient quantities to satisfy

bandwidth capacity identified in the PWS Appendix II – CSSC Bandwidth Estimates.

(2) Element 2 – Space Segment Quality. The offeror[']s approach to ensure Space segment quality as defined in PWS Section 6.2.2 [space segment technical performance and requirements].

(3) Element 3 – Satellite Availability. The offeror[']s approach to ensuring Satellite Availability as defined in PWS Section 6.2.5.1 [satellite availability].

RFP at 104.

Elements 2 and 3 incorporated specific document requirements. Element 2, space segment quality, was based on PWS section 6.2.2 and informed offerors that “[l]ink budgets shall be submitted with the technical proposal for all modem data rates requested in Appendix II – CSSC Bandwidth Estimates.”⁸ RFP at 12. Element 3, satellite availability, which incorporated PWS section 6.2.5.1, required offerors to “include[, for] each proposed satellite a Satellite Availability Report covering the previous 30 calendar days, the previous year, and the lifetime of the satellite.” Id. at 12. Finally, the agency confirmed, in response to a question from an offeror, that “link budgets are only required for terminals listed in Appendix II where frequency band and data rates are provided.” RFP, Amend. 0003, Questions & Answers (Q&A) Nos. 108a, 108b. See also, id., Amend. 0002, Q&A, No. 38.

The agency received three proposals by the October 28, 2014, closing date. Agency Report (AR) at 19. The agency conducted two rounds of discussions and requested final proposals by July 7, 2015. Id. at 8.

The RFP provided five possible adjectival ratings for the technical/risk factor: outstanding, good, acceptable, marginal, and unacceptable. RFP at 103. These ratings rested on the strengths, uncertainties, weaknesses, significant weaknesses and deficiencies that evaluators found in the proposals. A deficiency was defined as “a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” Id. A proposal would be unacceptable, and therefore, “unawardable,” if it contained one or more deficiencies. Id.

⁸ A telecommunications system link budget analyzes the gains and losses in the signal from the transmitter to the receiver.

The agency’s final evaluation of Intelsat’s and Segovia’s proposals was as follows:

	Intelsat	Segovia
Factor 1 – Technical Management		
<i>1.1 Space Segment Requirements</i>	Acceptable	Acceptable
<i>1.2 End-to-End Design</i>	Acceptable	Acceptable
<i>1.3 Terrestrial Services Requirements</i>	Good	Acceptable
Factor 2 – Past Performance	Substantial Confidence	Satisfactory Confidence
Factor 3 – Information Assurance	Acceptable	Acceptable
Factor 4 – Price	\$440,779,998	\$330,490,398

AR, Tab 19A, Source Selection Decision Document, at 25.⁹

Segovia’s proposal received no strengths, weaknesses, significant weaknesses, uncertainties, or deficiencies for any of the three technical subfactors. AR, Tab 13A, FPR Technical Consensus Report–Segovia, at 2. DISA concluded that Segovia’s proposal “demonstrate[d] they have the ability to provide satellite resources in sufficient quantities to satisfy bandwidth capacity identified in the PWS Appendix II – CSSC Bandwidth Estimates,” which formed part of the space segment subfactor requirements. Id. at 2-3.

Similarly, Intelsat’s proposal received no weaknesses, significant weaknesses, uncertainties, or deficiencies for any of the three technical subfactors. AR, Tab 13B, FPR Technical Consensus Report–Intelsat, at 2. Intelsat received one strength under the terrestrial services requirements subfactor. Id. DISA concluded that Intelsat’s proposal “demonstrate[d] they have the ability to meet all the requirements of Subfactor 1 – Space Segment Requirements, to include Element 1 – Satellite Capacity, Element 2 – Space Segment Quality, and Element 3 – Satellite Availability as specified in the CSSC RFP.” Id. at 2-3.

The source selection authority (SSA) found that Intelsat’s proposal was more highly rated than Segovia’s under the technical management factor, based on a strength under the terrestrial services requirements in addressing [DELETED]. AR, Tab 19A,

⁹ The third offeror’s evaluated price was slightly lower than Intelsat’s price. Decl. of DISA Contract Price/Cost Analyst (Oct. 21, 2015), at 1. The agency does not contest the protester’s status as an interested party based on the third offeror’s proposal.

Source Selection Decision Document, at 25-26. The SSA also found that Intelsat's proposal was more highly-rated than Segovia's under the past performance factor, because the protester "and its partners had the only Highly Relevant effort and the strongest overall performance levels." Id. at 26. Nonetheless, the SSA concluded that Segovia's proposal merited award for the following reason:

Although both the Technical and the Past Performance factors are significantly more important than Price, I believe the price difference of 25 percent, or approximately \$110M, is so significantly high as to diminish the benefits of IGC's one strength in its technical approach and its higher confidence rating under past performance.

Id. at 27.

On September 8, the agency provided Intelsat with a debriefing, and this protest followed on September 14. AR at 82.

DISCUSSION

Intelsat alleges that DISA's evaluation of Segovia's proposal failed to account for multiple deficiencies that rendered it unawardable. The protester also argues that the agency engaged in misleading discussions and that the price realism analysis contained significant errors. The culmination of these errors, Intelsat asserts, was a flawed best-value tradeoff analysis.

Because the resolution of the protest is primarily based on the interpretation of the solicitation, we address this prior to the specific protest grounds. Next, we examine whether the agency engaged in misleading discussions, and also consider how the discussions revealed the agency's interpretation of the solicitation. Subsequently, we turn to whether the agency reasonably concluded that the awardee's proposal complied with the solicitation, as to both proposed regional bandwidth coverage and required documentation, and then whether the agency's price realism evaluation was reasonable. For the reasons discussed below, we sustain the protest.

Solicitation Interpretation

Intelsat argues that offerors were required to propose "solutions that provided complete coverage by region using the bandwidths specified for that region." Protester's Comments & Supp. Protest (Oct. 23, 2015) at 13. DISA and Segovia challenge Intelsat's interpretation, arguing that it is not supported by the plain language of the RFP, it is inconsistent with the basic principles of contract interpretation, and it is inconsistent with Intelsat's own proposal. Supp. AR at 3; Protester's Comments & Supp. Protest (Oct. 23, 2015) at 66. The agency and intervenor also contend that the protester's allegations are an untimely challenge to a patent ambiguity in the solicitation. Supp. AR at 3-4; Intervenor's Supp.

Comments (Nov. 10, 2015) at 3. After review of the record, we agree with most--but not all--of the protester's arguments. Our interpretation of the solicitation, provided in detail below, forms the basis for our decision to sustain the protest.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. C & S Corp., B-411725, Oct. 7, 2015, 2015 CPD ¶ 311 at 3; Alliance Tech. Servs., Inc., B-410307, B-410307.3, Dec. 1, 2014, 2014 CPD ¶ 345 at 3. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 3.

As relevant to the protests, we find that the solicitation required offerors to provide regional coverage by bandwidth in accordance with Appendix II. The RFP states that in the (S) water regions, "[t]he basic requirement [for broadband coverage] is for C, Ka, and/or X-band bandwidth." RFP at 15-16. Based on this language, standing alone, we would agree with the agency and the intervenor that the RFP permitted offerors to use any combination of these bandwidths to provide coverage in the water regions.¹⁰ However, element 1, satellite capacity, states that proposals will be evaluated on their "ability to provide satellite resources in sufficient quantities to satisfy bandwidth capacity identified in the PWS Appendix II – CSSC Bandwidth Estimates." RFP at 104. Appendix II presents the agency's requirements for bandwidth and data rate by region. Id. at Appendix II. Therefore, we conclude the RFP committed the agency to a concurrent evaluation of regional coverage and bandwidth capacity.

We interpret the solicitation to require that--where Appendix II contained non-zero values for basic requirement bandwidths--an offeror was free to propose any combination of those bandwidths to provide complete coverage within a region. However, in Appendix II, most geographic region and bandwidth combinations contain zero values or empty cells for the data rates, as illustrated in the excerpted portion of Appendix II in Figure 1, supra. Where Appendix II contained zero values¹¹ for the baseline modem data rate and estimated capacity for a particular bandwidth in a particular region, the agency, effectively, had no metric upon which

¹⁰ The same would be true for the land regions, with the addition of Ku-band as a bandwidth option.

¹¹ We use the term "zero" to refer to both cells with the number zero and empty cells, because the result is the same.

to evaluate whether a proposed bandwidth, modem data rate, and estimated capacity meet the agency's needs for data transmission.¹²

We therefore conclude that, where Appendix II contained zero values for data rates for a basic requirement bandwidth, that bandwidth could not form part of an offeror's solution to the Appendix II requirements. This is because, when Appendix II contains a zero value for a data rate within a particular bandwidth and region, the lack of an established evaluation criterion effectively means that an offeror proposing this bandwidth could otherwise satisfy the RFP by proposing coverage with any--even zero--data capacity. As a result, in order to give effect to the concurrent capacity and coverage requirements in Appendix II, we interpret the RFP to require that--when there is only one bandwidth with non-zero data rates and estimated capacity in a region--an offeror must use that bandwidth to provide complete coverage in that region.¹³

The intervenor and the agency argue that we should, in essence, divorce coverage from capacity, such that an offeror's ability to provide coverage within a region should be separately evaluated from its ability to propose bandwidth in accordance with Appendix II. Supp. AR at 43-44, 55; Intervenor's Supp. Comments (Nov. 10, 2015) at 4, 13. Specifically, the agency claims that because PWS section 6.2.1, which requires offerors to propose bandwidth capacity in accordance with Appendix II, is distinct from PWS section 6.2.8, which addresses coverage, capacity and coverage are independent of one another. Supp. AR at 43-44. The agency further argues that because the evaluation elements do not cite PWS section 6.2.8., the ability to provide coverage is "not [part of] an evaluation factor," and therefore was not to be considered in the evaluation of proposals. *Id.* at 44. We do not agree. Element 1 of the space segment requirements subfactor of the technical/management factor provides that offerors were to be evaluated on their ability to provide bandwidth capacity in accordance with Appendix II, which explicitly lists bandwidth by region. RFP at 104; AR, Tab 2B, Appendix II. Appendix II contains concurrent requirements as to region (coverage) and bandwidth/data rate (capacity). Thus, capacity and coverage both form part of evaluation element 1.

Furthermore, to the extent that the agency argues that the solicitation was ambiguous (Supp. AR at 4), we conclude, as addressed next, that the agency's

¹² There is no evidence in the record that where an offeror, such as Segovia, proposed a coverage solution using bandwidth where Appendix II contained zero values for the baseline data rate and estimated capacity, the agency evaluated whether the solution provided a data rate transmission that was equivalent to the Appendix II bandwidth with a non-zero baseline data rate and estimated capacity.

¹³ As discussed below in our conclusion, to the extent this is not the interpretation the agency intended, we recommend that the agency revise the solicitation.

actions during discussions support the protester, thus making any ambiguity, at most, latent.¹⁴ Specifically, although discussed in greater detail below, it is relevant to note here that, during discussions, the agency consistently evaluated coverage and capacity in concert. See, e.g., AR, Tab 7D, Segovia Second Evaluation Notices (ENs), EN 49 (where the agency wrote that it was “[u]nclear if [Segovia’s] proposed solution provides X-band coverage over 100 percent of the emphasized area in Region S4,” and cited element 1, satellite capacity, which is linked to Appendix II). On this record, we find that both the plain language of the solicitation and the agency’s contemporaneous writings intended the two to be read together, and that—at least at some point in the process—the agency evaluated offerors’ ability to provide concurrent coverage and capacity.

Misleading Discussions

Intelsat contends that DISA conducted misleading discussions by changing the agency’s interpretation of the RFP after discussions and failing to inform the protester of this change. Protester’s Comments & Supp. Protest (Oct. 23, 2015), at 17. Specifically, the protester alleges that the ENs provided to both it and Segovia during discussions demonstrated that DISA originally intended for offerors to propose complete bandwidth coverage for each region in Appendix II. Id. at 18-19. Intelsat alleges that, after receiving Segovia’s second-round EN responses, DISA subsequently concluded that offerors could instead propose any combination of bandwidths listed in the basic coverage requirement for a particular region. Id. at 18. For the reasons discussed below, we agree with the protester that the agency’s discussions questions reflected a change in the agency’s interpretation of the solicitation requirements and that the agency did not inform Intelsat of this change.

It is a fundamental principle of negotiated procurements that an agency may not mislead an offeror—through the framing of a discussion question or a response to a question—into responding in a manner that does not address the agency’s concerns, or misinform the offeror concerning a problem with its proposal or about the government’s requirements. Refinery Assocs. of Tex., Inc., B-410911.2, Mar. 18, 2015, 2015 CPD ¶ 116 at 6; Per Aarsleff A/S, et al., B-410782 et al., Feb. 18, 2015, 2015 CPD ¶ 86 at 15. Specifically, an agency may not, through its questions or silence, lead an offeror into responding in a manner that fails to

¹⁴ An ambiguity exists where two or more reasonable interpretations of the solicitation are possible. Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. An obvious, gross, or glaring error in the solicitation is a patent ambiguity; a latent ambiguity is more subtle. Id. Where there is a latent ambiguity, both parties’ interpretation of the provision may be reasonable, and the appropriate course of action is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement. Id.

address the agency's actual concerns; may not misinform the offeror concerning a problem with its proposal; and may not misinform the offeror about the government's requirements. Velos, Inc., et al., B-400500 et al., Nov. 28, 2008, 2010 CPD ¶ 3 at 6; Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168 at 9-11; DTH Mgmt. Grp., B-252879.2, B-252879.3, Oct. 15, 1993, 93-2 CPD ¶ 227 at 4.

In the first round of discussions, DISA issued ENs to both offerors, advising that their proposals failed to provide "required" coverage for bandwidths by region. As relevant here, DISA issued Segovia an EN with a deficiency because its "satellite coverage solution . . . does not demonstrate an ability to meet the required C-band coverage in Region S4."¹⁵ AR, Tab 5D, Segovia First ENs, EN 17 at 1. DISA also issued ENs to Segovia because its coverage maps failed to demonstrate "an ability to meet the required X-band coverage" in region S4.¹⁶ Id., EN 26 at 1-2. The protester contends, and we agree, that by issuing simultaneous deficiencies for lack of C-band and X-band coverage in the same region (S4), DISA demonstrated that, although the RFP's "basic requirement is for C, Ka, and/or X-band bandwidth," the agency interpreted the RFP as requiring complete coverage for each allowable bandwidth in the region. Further, DISA issued the ENs under element 1 of the space segment requirements subfactor of the technical/management factor, which shows that DISA interpreted coverage to be part of the evaluation criteria. Id.

Intelsat initially proposed coverage for every frequency band that showed zero values on Appendix II, e.g., all bandwidths in the basic requirement for all regions. AR, Tab 12C1, Intelsat Final Proposal, at 31-37. As a result, the first-round evaluation notices did not generally cite Intelsat for failing to provide regional bandwidth coverage. However, as relevant to DISA's initial interpretation of the RFP requirements, the agency issued Intelsat an EN because it failed to provide required documentation for [DELETED] of its [DELETED] proposed C-band satellites for region S4, stating that without the link budget analysis (LBA) for [DELETED], Intelsat's proposal "does not provide sufficient coverage for C-band in Region S4."¹⁷ AR, Tab 6C, Intelsat First ENs, EN 25 at 1. Having also proposed coverage in other bandwidths for region S4, Intelsat argues, and we agree, that it reasonably interpreted this EN as expressing the agency's desire that offerors propose complete regional coverage in more than one bandwidth.

¹⁵ DISA issued Segovia similar deficiencies for C-band coverage in the S1, S2, and S3 regions, which were similarly resolved. AR, Tab 5D, Segovia First ENs, EN 16 at 1-2; EN 17 at 1-2; EN 18 at 1-2.

¹⁶ DISA has failed to explain why it issued ENs for concurrent coverage when it ultimately accepted overlapping bandwidths to provide complete regional coverage.

¹⁷ A telecommunications system link budget analyzes the gains and losses in the signal from the transmitter to the receiver.

Intelsat claims that it relied on DISA's acceptance of its EN responses as an indication of how the agency interpreted the RFP's requirement for "specific bandwidth coverage for particular regions." Protester's Comments & Supp. Protest (Oct. 23, 2015), at 19. When the agency issued the protester an EN for its failure to propose X-band satellites that would cover "100 percent" of region WP, Intelsat responded by highlighting that "although there is no satellite bandwidth requirement in Appendix II," it would, regardless, add X-band satellites as they became available. AR, Tab 8C, Intelsat Second ENs, EN 44 at-1-2. See also Intelsat AR, Tab 8C, Intelsat Second ENs, ENs 46-50 (in which Intelsat agreed to provide X-band and Ka-band satellite coverage in the S regions, when Appendix II contains zero values for these baseline bandwidths in the S regions). As above, to the extent that the agency claims that any conflict in the RFP created an ambiguity, we find that the discussions here reasonably supported the protester's interpretation that the agency's capacity evaluation also evaluated coverage, which would render any ambiguity latent. See Colt Def., LLC, supra.

In the second discussion round, DISA issued several ENs to Segovia on the basis that its revised maps did not show 100 percent coverage of various regions. AR, Tab 7D, Segovia Second ENs, EN 47-51 at 1. In its response, Segovia stated that its solution "cover[ed] the entire emphasis area of [each questioned] region when all frequency bands are overlaid across the region in accordance with [the solicitation, which states that the] 'basic requirement is for C, Ka, and/or X-band bandwidth.'" Id. at 2 (emphasis in original). The agency concluded the awardee's coverage maps, which overlaid the coverage areas provided by multiple satellites providing various bandwidths, resolved the uncertainties. The agency ultimately concluded that Segovia's proposal satisfied Appendix II's requirements. AR, Tab 19A, Source Selection Decision Document, at 11.

In light of the record above, we agree with Intelsat that the agency's ENs to both offerors demonstrate that the agency initially expected offerors to provide complete regional coverage by bandwidth. The offerors, however, chose to resolve the ENs differently: Intelsat responded by offering to incorporate more satellites when they became available, while Segovia challenged the agency's interpretation of the solicitation requirements, arguing that by overlaying coverage in different bandwidths, its proposal had satisfied the solicitation. The record shows that, after reviewing Segovia's second-round EN responses, the agency changed its interpretation of the RFP. Specifically, instead of insisting that offerors propose regional coverage for a bandwidth where Appendix II contained zero values, DISA concluded that an offeror could successfully overlay coverage provided by satellites in different bandwidths--even those whose Appendix II capacity was zero--and achieve full coverage. Id. There is no indication in the record that DISA informed Intelsat of this change in its interpretation of the solicitation requirements.

Intelsat--which proposed complete coverage,¹⁸ contends that “[i]f the RFP had allowed offerors to develop a solution to provide satellite coverage for each operating region identified in PWS [§] 6.2.8.4 without regard to the bandwidths specified in Appendix II, Intelsat would have developed a different and less costly solution than the one it proposed.” Protester’s Comments & Supp. Protest (Oct. 23, 2015), Decl. of Intelsat Vice President, at 1. As our Office has held, misleading discussions with an offeror include situations where an agency fails to advise an offeror when the agency’s requirements have changed. Velos, Inc., et al., supra. On this basis, we find that the agency’s interpretation of the RFP changed, and that it failed to inform the protester of such change. We sustain the protest.

Segovia’s Compliance with the RFP’s Mandatory Coverage Requirements

Next, Intelsat claims that Segovia’s proposal failed to comply with mandatory requirements under the technical management factor of the RFP by failing to propose complete C-band coverage in region S4, and that the agency erred in its evaluation by concluding otherwise. Protester’s Comments & Supp. Protest (Oct. 23, 2015) at 9. For the reasons discussed below, we conclude that the agency’s evaluation of the awardee’s proposal was unreasonable.

In reviewing a protest challenging an agency’s 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. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to assess whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. ARBEiT, LLC, B-411049, Apr. 27, 2015,

¹⁸ Segovia argues that Intelsat’s alleged interpretation is not only inconsistent with Intelsat’s own proposal, but is also unreasonable because it results in an impossible requirement for 100 percent coverage, when no combination of existing satellites could have provided such coverage. Intervenor’s Comments (Oct. 23, 2015), at 11. Intelsat responds that DISA reasonably distinguished between “an offerors inability to procure commercially available satellite resources, and the non-existence of such resources, and allowed for a mitigation plan only as to the latter.” Protester’s Supp. Comments (Nov. 10, 2015), at 20. We agree that the record here demonstrates that the agency’s evaluation of EN responses as to lack of coverage, when no existing satellites provided such coverage, was not inconsistent with the agency’s initial interpretation that offerors propose complete regional coverage using multiple bandwidths. In effect, the agency waived the requirement, but only where full coverage was not possible with existing satellites. See, e.g., AR, Tab 8C, Intelsat Second ENs, EN 44, at 2 (where the agency found that Intelsat’s response resolved the EN because “commercial resources [for satellite coverage] do not exist over the identified gap”).

2015 CPD ¶ 146 at 4. A protester’s disagreement with the agency’s evaluation, without more, does not establish that the agency acted unreasonably. Strategic Res., Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4.

In a negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award. Sealift, Inc., B-409001, Jan. 6, 2014, 2014 CPD ¶ 22 at 6. The procuring agency has primary responsibility for evaluating the technical information supplied by an offeror and determining the acceptability of the offeror’s proposed item or service; we will not disturb such a determination unless it is shown to be unreasonable. Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4; NOVA Corp., B-411851, Nov. 6, 2015, 2015 CPD ¶ 346 at 4 (clearly stated requirements are considered material to the needs of the government, and a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award).

C-Band in S4 Region

In the S4 region, Appendix II contained zero values for all baseline data rates in all bandwidths other than C-band.¹⁹ RFP, Appendix II–CSSC Bandwidth Estimates. In accordance with our above interpretation, the lack of Appendix II capacity requirements for all bandwidths other than C-band meant that the agency lacked established criteria with which to evaluate whether an offeror’s proposed solution met the agency’s capacity needs. As a result, we find that, because C-band was the only allowable bandwidth with non-zero values in Appendix II, offerors were required to propose C-band to cover region S4, and the RFP required the agency to evaluate their capacity to do so.²⁰ Id. In this regard, because C-band was the only bandwidth with non-zero capacity, offerors were required to propose C-band coverage over the entirety of region S4.

Segovia listed satellites [DELETED] as providing C-band coverage in region S4. AR, Tab 11C, Segovia Final Proposal, at II-11m, Exh. 19. However (as discussed in detail below), Segovia did not provide certain documentation for [DELETED], and did not consistently identify [DELETED] as part of its proposed solution. DISA confirms that Segovia “did not identify [satellite [DELETED]] as part of their solution to provide coverage for region S4.” Second Decl. of TET Team Lead (Nov. 2, 2015), at 2.

¹⁹ The S regions also had zero values for all non-baseline bandwidths, with the exception of X-band bandwidth. RFP, Appendix II–CSSC Bandwidth Estimates.

²⁰ Similarly, region WP contained zero values for all baseline modem data rates in bandwidths other than Ku-band. RFP, Appendix II–CSSC Bandwidth Estimates.

The protester argues, and we agree, that without [DELETED], Segovia's proposal leaves portions of region S4 without C-band coverage. Protest at 38. Because we found above that Appendix II required complete C-band coverage in the S regions, we find that the agency erred in concluding that Segovia's proposal satisfied material requirements of the solicitation.

DISA argues that "PWS [§] 6.2.1.1 and PWS Appendix II - CSSC Bandwidth Estimates do not require complete coverage of the entire area by a specific bandwidth," and that "C-band for the entire region S4 . . . is not necessary. . . ." ²¹ Second Decl. of TET Team Lead (Nov. 2, 2015), at 1. DISA further asserts that Appendix II does "not expressly require C-band coverage in Region S4" and concludes that Segovia met the coverage requirement for region S4 through a combination of the coverage areas of C-band and X-band. AR at 99.

We do not agree with DISA that Segovia satisfied the RFP's requirements by providing C-band coverage for only a portion of region S4. First, partial coverage does not meet the requirements in Appendix II for complete regional coverage. AR, Tab 5D, Segovia First ENs, EN 17 at 1 (where the agency cited Segovia's proposal for failing "to meet the required C-band coverage in region S4"). Further, although the PWS allows X-band coverage in S4, Appendix II contained no baseline data rates for X-band bandwidth in region S4. RFP at 16, PWS § 6.2.8.4.13. As discussed above, the agency therefore lacked an evaluation metric to determine whether the proposed X-band coverage concurrently met the agency's data capacity transmission needs (and did not in fact evaluate Segovia's proposed X-band data capacity). DISA's attempt to independently evaluate coverage and capacity overlooks the fact that Appendix II specifies bandwidth capacity by region, and further, that when there is only one usable bandwidth for a region, that bandwidth alone must satisfy the solicitation's coverage requirements. Id. at 2.

Overall, we find that when giving effect to all of the provisions of the RFP, the RFP allowed a narrower solution than that endorsed by the agency here. The fact that Appendix II effectively zeroed out otherwise allowable bandwidths cannot be overcome by separating coverage and capacity, when Appendix II contains both concurrently and forms the basis for an evaluation element within the technical evaluation factor. On this basis, we sustain the protest.

²¹ Conflictingly, the agency affirms that "[c]apacity requirements as stated in Appendix II are still required for specific band[width]s within specific regions." Second Decl. of TET Team Lead (Nov. 2, 2015), at 4.

Ku-Band in Region WP

Echoing its claim about Segovia's lack of C-band coverage in region S4, Intelsat similarly alleges that Segovia's proposed Ku-Band coverage in region WP leaves substantial portions of the region without Ku-band coverage. Protester's Comments & Supp. Protest (Oct. 23, 2015), at 37-38. Specifically, Intelsat claims that Segovia did not in fact propose a satellite necessary for Ku-band coverage, and because Ku-band is the only available band, without this satellite Segovia's proposal fails to cover region WP. Id.

In Appendix II, region WP only has non-zero values in the Ku-Band bandwidth. As a result, the solicitation required offerors to propose Ku-band bandwidth coverage for the entirety of region WP. This interpretation is consistent with the record. DISA issued ENs to Segovia on the basis that it failed to demonstrate "an ability to meet the required Ku-band coverage" in region WP. AR, Tab 5D, Segovia First ENs, EN 20 at 1.

Segovia listed satellites [DELETED] to "provide one hundred percent of the [Ku-band] coverage over emphasized area in Region WP . . . throughout the POP [period of performance] at all times." AR, Tab 11C, Segovia Final Proposal, at II-11i, Exh. 15. However, relevant portions of Segovia's proposal do not include satellite [DELETED]. AR, Tab 11C11, Appendix B, EIRP and G/T Diagrams. DISA confirms that [DELETED] was not part of Segovia's proposed solution. Second Decl. of TET Team Lead (Nov. 2, 2015), at 4.

DISA asserts that "PWS [§] 6.2.1.1 and PWS Appendix II - CSSC Bandwidth Estimates do not require complete coverage of the area by . . . Ku-band (region WP)." Second Decl. of TET Team Lead (Nov. 2, 2015), at 4. The agency claims that the RFP allowed offerors to propose C, Ka, Ku and/or X-band bandwidths to provide satellite coverage, and further, that satellite coverage "was not part of the evaluation subfactors." AR at 102, citing PWS § 6.2.8.4.9. DISA's explanation fails to address how an offeror satisfies Appendix II's capacity requirements when it proposes coverage by a satellite for which no bandwidth capacity is identified. As above, we find that the agency's conclusion was unreasonable.

The record shows that Segovia's proposed satellites, i.e., [DELETED], do not cover the entirety of region WP in the Ku-bandwidth. AR, Tab 11C, Segovia Final Proposal, at II-11i, Exh. 15. We therefore find that the agency unreasonably concluded that Segovia's proposal satisfied the solicitation requirements.

Segovia's Required Documentation

Intelsat also argues that Segovia failed to provide documents required by the solicitation in that it failed to provide the required LBAs and satellite availability reports for satellites upon which its proposed solution relied. Protester's Comments

& Supp. Protest (Oct. 23, 2015), at 8. To simplify reading, our analysis will focus on satellite [DELETED], although our conclusion is the same for any other proposed satellite for which LBAs and satellite availability reports were not provided.

The RFP informed offerors that “[l]ink budgets shall be submitted with the technical proposal for all modem data rates requested in Appendix II – CSSC Bandwidth Estimates.” RFP at 12, PWS § 6.2.2. The RFP also required offerors to “include[, for] each proposed satellite a Satellite Availability Report covering the previous 30 calendar days, the previous year, and the lifetime of the satellite.” *Id.* Thus, offerors were required to provide an LBA and a satellite availability report for each satellite forming part of an offeror’s proposed solution to the requirements as provided in Appendix II, and provision of these documents formed part of the agency’s evaluation metrics in element 1. RFP at 104. Furthermore, DISA issued significant weaknesses to Intelsat for failing to provide an LBA for one of its proposed satellites. AR, Tab 6C, Intelsat EN 25, EN 26, EN 27, EN 28 and EN 29 at 1. DISA concluded that, without the LBA, Intelsat’s proposal did “not provide sufficient coverage for the C-Band in Region S4.” *Id.*, EN 26 at 1.

Among the satellites Segovia proposed to provide C-band coverage in region S4 was [DELETED]. AR, Tab 11C, Segovia Final Proposal, II-11m, at Exh. 19. Intelsat claims that, because LBAs were a contract requirement, Segovia’s decision not to include an LBA for [DELETED] meant that Segovia’s proposal failed to comply with the RFP. Protester’s Comments & Supp. Protest (Oct. 23, 2015), at 20-21 citing AR, Tab 11c, Segovia Final Proposal, at Exhibit 5 (Satellites and Antennas Currently Available and Selected to Satisfy Navy Space Segment Capacity Requirements (Baseline, Non-Baseline, Surge)). As such, Intelsat argues, Segovia’s proposal either fails to provide the claimed coverage, or Segovia has failed to comply with a material solicitation requirement. Protester’s Comments & Supp. Protest (Oct. 23, 2015), at 8.

As relevant here, the agency acknowledges that Segovia did not provide an LBA or a satellite availability report for [DELETED] and argues that the link budget for [DELETED] satisfied the RFP. Supp. AR at 47, 51. DISA claims that “link budgets only need to be submitted to meet the requirements of Appendix II.” *Id.* at 44-45 (citing Q&A No. 8 in RFP Amend. 0002 and Q&A No. 108 in RFP Amend. 0003), 51.²²

²² In the questions and answers, the agency informed offerors that “link budgets are only required for terminals listed in Appendix II where frequency band and data rates are provided.” RFP Amend. 0003, Q&A 108b. As a result, an offeror proposing a satellite to satisfy the Appendix II requirements was required to include an LBA for that satellite in its proposal.

We do not agree with the agency that [DELETED] is not part of Segovia's solution to meet the RFP requirement for C-band coverage in region S4. As we concluded above, without [DELETED], Segovia cannot meet the coverage requirement in Appendix II. To the extent that Segovia proposed [DELETED] to meet the requirements of Appendix II, it was also required to provide corresponding link budgets and satellite availability reports. The agency's argument that Segovia was excused from doing so because these satellites were not necessary to meet the RFP requirements, or were not part of Segovia's proposal, is inconsistent with Segovia's proposal and the agency's resolution of EN 17, which was resolved when Segovia updated its coverage maps. If Segovia did not provide link budgets and satellite availability reports for the satellites, then the agency's conclusion that Segovia satisfied the RFP documentation requirements was not reasonable. On this record, we sustain the protest.²³

Price Realism

Finally, Intelsat argues that DISA's price realism evaluation was flawed, in that the agency either evaluated Segovia's "actual proposed fleet of satellites, which is not realistic for the coverage requirements" or evaluated the satellites listed in Segovia's coverage maps, "which [do] not reflect [Segovia's] actual method of performance." Protester's Comments & Supp. Protest (Oct. 23, 2015), at 54. Because we found above that the agency engaged in misleading discussions and that its evaluation was flawed, and because we recommend below that the agency ultimately allow offerors to submit revised proposals, we do not address the issue of price realism in detail.

Where, as here, a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc., Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17.

²³ In another example, Segovia used satellite [DELETED] to provide Ku-band coverage in region SA and resolve the uncertainty related to factor 1, subfactor 1, evaluation criteria 1 (satellite capacity). AR, Tab 11C, Segovia Final Proposal, at II-12. DISA confirms that Segovia did not provide an LBA or satellite report for [DELETED]. Second Decl. of TET Team Lead (Nov. 2, 2015), at 4. The agency fails to explain how a satellite that resolved a capacity and coverage EN was not part of the awardee's proposed solution.

Because we conclude that DISA erred by allowing Segovia to successfully propose a solution that did not reasonably meet the agency's requirements, we necessarily also conclude that the agency's price realism analysis was flawed. As a result, we sustain the protest on this basis as well.²⁴

CONCLUSION AND PREJUDICE

In summary, we find that DISA's evaluation of Segovia's proposal under the RFP's requirements was based on an unreasonable interpretation of those requirements, and that the agency's interpretation changed over the course of the procurement. We also find that the agency's discussions with Intelsat were misleading because, after following one interpretation of the solicitation through ENs, the agency ultimately used another in its evaluation of Segovia's proposal, without informing Intelsat of the change. Finally, we find that the flawed evaluation affected the agency's price realism analysis. We conclude that Intelsat was prejudiced by DISA's actions here because, but for the agency's misleading discussions and erroneous determination that Segovia's proposal satisfied the requirements of the RFP, in this best-value procurement, Intelsat, which submitted a technically-acceptable proposal, would have had a substantial chance of receiving the award.

DISA and Segovia present a number of arguments contending that, regardless of the merits of the protest, Intelsat has failed to demonstrate prejudice. 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

²⁴ Intelsat also raises other arguments. While we do not address in detail all of the arguments raised by Intelsat, we have reviewed each and conclude that none provides a basis to sustain the protest. For example, Intelsat argues that DISA improperly allowed Segovia to propose Ku-band to meet the coverage requirements in the "blue water" S regions, when the basic requirement is only for "C, Ka, and/or X-band bandwidth." Protester's Comments & Supp. Protest, at 41; RFP at 15-16, PWS §§ 6.2.8.4.11-6.2.8.4.13. The protester argues that the omission of Ku-band from the basic requirement for the S regions is equivalent to a prohibition against Ku-band in the S regions. *Id.* The agency disagrees, explaining that "[o]fferors could exceed the basic requirement by including Ku band." Second Decl. of TET Team Lead (Nov. 2, 2015), at 4. DISA concludes that "inclusion of Ku band for these [S water] regions did not render the proposal unacceptable." *Id.* We agree with the agency and the intervenor that nothing in the solicitation prohibits an offeror from proposing to offer Ku-band bandwidth capacity in the S regions. While offerors are not excused from proposing bandwidth capacity and regional coverage in accordance with Appendix II, the RFP does not prohibit them from proposing additional bandwidth capacity.

will not sustain the protest. See, e.g., SunGard Data Sys., Inc., B-410025, Oct. 10, 2014, 2014 CPD ¶ 304 at 7-8.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis; that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. An agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other offerors. Safety-Kleen (TS), Inc., B-284125, Feb. 23, 2000, 2000 CPD ¶ 30 at 2-3. Unfair competitive prejudice from a waiver or relaxation of the terms and conditions of the RFP for one offeror exists where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. Vocus Inc., B-402391, Mar. 25, 2010, 2010 CPD ¶ 80 at 6. We have reviewed all of the agency's and intervenor's arguments that there was no prejudice to Intelsat here; we find that none has merit, but present certain of these below.

For example, the agency and intervenor argue that the protester has failed to demonstrate prejudice because its unit prices were fixed, and any quantity variation would not uniquely affect it. Supp. AR at 5; Intervenor's Supp. Comments (Nov. 10, 2015), at 23. We do not agree.

First, we find that the agency improperly awarded the contract on the basis of a proposal that materially failed to comply with the RFP. See Sealift, Inc., supra (in a negotiated procurement, a proposal that fails to conform to material terms and conditions of the solicitation is unacceptable and may not form the basis for award). Although the agency has not argued that it intentionally waived the solicitation's requirements for Segovia, had it raised this argument, the record shows that, through misleading discussions and a flawed evaluation, any waiver would not have been equally applied. Vocus Inc., supra.

Additionally, we conclude that the protester has alleged sufficient prejudice by claiming that it was misled during discussions and would have otherwise proposed a different and lower-cost solution. Protester's Comments & Supp. Protest (Oct. 23, 2015), at 14. The intervenor argues that the protester has failed to provide adequate detail regarding this claim. Intervenor's Supp. Comments (Nov. 10, 2015), at 21. However, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5. On the record before us, we find a reasonable probability that the protester was prejudiced.

RECOMMENDATION

We recommend that the agency review the RFP to assess whether it describes the agency's needs. If the agency concludes that the RFP adequately describes the agency's needs, then we recommend that DISA reopen discussions with offerors to address the agency's interpretation of the RFP and allow offerors to submit revised proposals. If the RFP does not describe the agency's needs, we recommend that the agency amend the solicitation and obtain revised proposals. In either case, we recommend that the agency evaluate the revised proposals consistent with the solicitation and make a new best-value tradeoff decision. If an offeror other than Segovia is found to offer the best value, we recommend that DISA terminate the award to Segovia.

We also recommend that the agency reimburse the protester for costs associated with filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at § 21.8(f).

We sustain the protest.

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General Counsel