



# Decision

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**Matter of:** CymSTAR, LLC

**File:** B-422576

**Date:** July 31, 2024

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## DIGEST

1. Protest challenging various solicitation terms as ambiguous or preventing offerors from competing on a common basis is denied where the protester’s interpretation of the solicitation is not reasonably supported, and the solicitation provides sufficient information to allow offerors to intelligently prepare proposals.
  2. Protest that agency failed to mitigate an unequal access to information organizational conflict of interest held by an offeror is denied where the record shows that the information was voluntarily disclosed to the offeror by a private party pursuant to an arms-length agreement between the two firms.
  3. Protest challenging solicitation’s failure to disclose the relative importance of evaluation subfactors and factors is denied where the protester’s allegations are based on a misunderstanding of applicable law.
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## DECISION

CymSTAR, LLC, a small business of Broken Arrow, Oklahoma, challenges the terms of fair opportunity proposal request (FOPR) No. FA8617-24-R-B001, issued by the Department of the Air Force for the acquisition of a maintenance training system (MTS) for the agency’s fleet of T-7A aircraft. The protester challenges the solicitation terms pertaining to the cost to obtain necessary technical data, as well as the FOPR terms governing the weight afforded to evaluation subfactors and factors. CymSTAR also

contends that the agency failed to adequately investigate and mitigate an unequal access to information organizational conflict of interest (OCI) that provides another offeror with an unfair competitive advantage.

We deny the protest.

## BACKGROUND

The instant solicitation seeks a contractor to train the personnel who maintain the Air Force's T-7A aircraft and its associated subsystems. As relevant here, the T-7A Advanced Pilot Training (APT) program is an Air Force program that will replace the agency's existing training programs for student pilots. Agency Report (AR), Tab 6, FOPR attach. 2, Statement of Work (SOW) at 1. The T-7A APT program includes several subprograms, including the T-7A MTS at issue in this protest. *Id.* The T-7A MTS will provide personnel with the foundational skills and core competencies required to maintain the T-7A aircraft and its associated subsystems. *Id.*

On March 20, 2024, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the Air Force issued the solicitation as a set-aside to small businesses holding the agency's Training Systems Acquisition IV indefinite-delivery, indefinite-quantity (IDIQ) contract.<sup>1</sup> Contacting Officer's Statement (COS) at 2. The FOPR seeks a contractor to provide the T-7A MTS, which will include a suite of maintenance training devices, interactive multimedia instruction and training materials, smart classrooms, and support environments to manage training schedules, student data, and equipment updates. SOW at 1.

The FOPR anticipates the issuance of a delivery order comprised of a 1-year base period and four 1-year option periods with fixed-price-incentive, cost-reimbursable,<sup>2</sup> cost-plus fixed-fee level of effort, and fixed-price CLINs. AR, Tab 10, FOPR attach. 6, § L at 2. The FOPR states that award will be made on the basis of a tradeoff, considering technical approach and price. AR, Tab 11, FOPR attach. 7, § M at 3-5.<sup>3</sup> With respect to the relative order of importance of the evaluation factors in the tradeoff, the solicitation provides:

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<sup>1</sup> The agency issued the FOPR instructions (submitted as agency report tab 10) and evaluation factors (submitted as agency report tab 11) as attachments to the FOPR. The instructions and evaluation criteria are cited herein as section L and section M, respectively.

<sup>2</sup> The cost-reimbursable contract line item number (CLIN) is intended to include costs associated with travel, shipping, subscriptions, and licenses. FOPR § L at 2; COS at 12.

<sup>3</sup> Some of the documents submitted with the agency report are not paginated, including section M of the FOPR. Citations of those documents in this decision refer to the Bates numbers assigned by the agency.

A tradeoff may result in an award to a higher rated, higher priced Offeror, where the decision is consistent with the evaluation factors, and the [source selection official] reasonably determines that the technical approach of the higher priced offer outweighs the price difference. The Government reserves the right to award to a higher priced Offeror if that Offeror's proposal is determined to represent the best value to the Government.

*Id.* at 3. The technical factor consists of four subfactors (systems engineering, program management, instructional system design, and maintenance training devices). *Id.* at 5. The FOPR does not state the relative importance of these subfactors. *Id.*

The SOW provides that the T-7A MTS contractor will be supported by the T-7A APT program contractor, The Boeing Company.<sup>4</sup> SOW at 2; COS at 2. Namely, Boeing, in its role as the T-7A APT program contractor, is required to provide technical data packages to the T-7A MTS contractor to use in designing and developing the MTS.<sup>5</sup> SOW at 2; COS at 2-3; AR, Tab 71, T-7A APT Program Contract at 127. Boeing is also required to provide this same data to the agency under its contract with the Air Force, and the agency provided a portion of the data to offerors in the FOPR offerors' library. COS at 8; AR, Tab 71, T-7A APT Program Contract at 127.

After the agency issued the FOPR, prospective offerors posed questions about obtaining the T-7A APT program technical data and how to use the data in their proposals. For example, a potential offeror wrote: "Clarify if the Government will provide the T-7A aircraft configuration baseline data for bidders during proposal development." AR, Tab 57, 1st Set of Questions and Answers (Q&A) at 10. The agency responded by directing offerors to the offerors' library and stating: "Offerors are expected to base proposals on the information provided. It is the Government's intent

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<sup>4</sup> Under the T-7A APT program contract, Boeing is tasked with all engineering and manufacturing development, production, and sustainment activities related to the aircraft system and the ground-based training system. AR, Tab 71, T-7A APT Program Contract at 8.

<sup>5</sup> The T-7A APT program contract describes the data to be provided as follows:

The Contractor shall provide an MTS data package to provide all necessary APT [operation, maintenance, installation, and training] and engineering data to the Government necessary to support the design and manufacture of maintenance training devices. The Contractor shall deliver sufficient APT Aircraft data to design and build a MTS that trains an [organizational]-level, [depot]-level, and additional maintenance and repair capability. The Contractor shall provide draft versions of all MTS data when necessary to support the MTS developmental timeline.

AR, Tab 71, T-7A APT Program Contract at 127.

to assist the MTS Contractor by providing updated air vehicle design data during the MTS delivery order [period of performance].” *Id.*<sup>6</sup>

When the agency provided answers to the questions submitted, the Air Force also provided instructions for executing an associate contractor agreement (ACA) with Boeing.<sup>7</sup> AR, Tab 61, FOPR What’s New at 1-2.<sup>8</sup> The agency states that the ACA is intended to facilitate the exchange of technical data between Boeing and the successful offeror.<sup>9</sup> COS at 2-3.

The agency received additional questions from potential offerors after issuing the ACA guidance. See AR Tab 59, 3rd Set of Q&A. As relevant here, a potential offeror asked if the Air Force would add a cost-type CLIN for acquiring technical data because pricing under an ACA was unknown. *Id.* The agency responded, in relevant part:

The only technical data that would fall outside the purview of ACA process would be data the T-7A [original equipment manufacturer (OEM)] is not

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<sup>6</sup> In the response, the Air Force also referred offerors to the FOPR instructions, which state that although the agency intends to provide the MTS contractor with all relevant technical data in its possession, the offeror is ultimately responsible for obtaining all technical data necessary for performance. AR, Tab 57, First Set of Q&A at 10.

Additionally, a prospective offeror asked the agency to define the level of data to be included in the proposal as compared to the detail to be provided after award. *Id.* at 8. The agency responded: “It is acceptable to base the proposal on assumed access to a T-7A aircraft with estimates of the information listed in the SOW [ ] and the level of risk associated with the estimates.” *Id.*

<sup>7</sup> ACAs are governed by Air Force FAR Supplement Procedures, Guidance, and Information 5371.9000, Associate Contractor Agreements. The SOW requires the T-7A MTS contractor to “enter into ACAs for any portion of the delivery order requiring joint participation in accomplishment of the Government’s requirements.” SOW at 88. The agency states that the ACA will allow the MTS contractor to receive the T-7A data directly from the T-7A APT program contractor (Boeing) in addition to the Air Force. Memorandum of Law (MOL) at 3.

<sup>8</sup> The agency report does not indicate that the Air Force issued any amendments to the FOPR. Instead, a document titled “What’s New???” (submitted as tab 61 to the agency report) states: “This file will serve as a running log of the content posted to the [Training Systems Acquisition IV] Collaboration Site concerning the T-7A [MTS] acquisition. We will not only identify the item(s) posted but also what has changed, as applicable.” AR, Tab 61, FOPR What’s New at 1. The document provides information regarding FOPR Q&As and the posting of other solicitation documents.

<sup>9</sup> The SOW for the T-7A APT program contract provides: “If directed, the Contractor shall develop and enter into an ACA with a potential MTS Contractor in order to share the MTS data package for the MTS.” AR, Tab 71, T-7A APT Program Contract at 67.

contractually required to deliver under its APT contract. Any subcontract for the acquisition of technical data from the T-7A OEM would necessarily fall outside the ACA process and would be subject to the consent to subcontract required by FAR clause 52.244-2 Subcontracts. As such, a CLIN for the acquisition of technical data will not be considered at this time.

*Id.*<sup>10</sup>

In response, CymSTAR submitted a letter to the agency on May 8, 2024. See AR, Tab 67, CymSTAR Letter to Agency. In the letter, CymSTAR stated that Boeing is a proposed subcontractor of another offeror, PTC Solutions JV LLC (PTC), and declined to discuss T-7A data availability and pricing with CymSTAR. *Id.* at 2. The protester wrote that Boeing offered data, related products, and pricing to PTC, and that this information provides PTC with an unfair competitive advantage. *Id.* CymSTAR asked the agency to consider several changes to the FOPR--including requiring Boeing to provide data lists and prices to all offerors--and CymSTAR asked the agency to extend the deadline for submission of proposals. *Id.* at 3-4. The agency did not make any changes to the FOPR in response to CymSTAR's letter, and it did not extend the deadline for proposal submission.

Before the submission deadline, CymSTAR filed this protest with our Office.<sup>11</sup>

## DISCUSSION

As an initial matter, CymSTAR challenges aspects of the solicitation that pertain to obtaining T-7A data from the T-7A APT program contractor, Boeing. Specifically, the protester asserts that the FOPR is ambiguous as to whether the contractor or the agency bears the cost risk of acquiring the data needed for performance, and that this ambiguity means the offerors will not be competing on a common basis under the cost/price factor. Next, CymSTAR alleges that Boeing's role as a proposed subcontractor to PTC gives rise to a potential unequal access to information OCI, and the Air Force's investigation into this OCI was insufficient. Last, the protester complains that the FOPR does not comply with the FAR because it does not disclose the relative

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<sup>10</sup> The model delivery order provided with the solicitation includes FAR clause 52.244-2, Subcontracts, and provides that the contractor must obtain consent from the agency before placing a subcontract "that includes the procurement and/or purchase of technical data related to the T-7A Aircraft system" or "technical data related to the T-7A Ground Based Training System." AR, Tab 5, FOPR attach. 1, Model Delivery Order at 111-12.

<sup>11</sup> The delivery order, issued under the Training Systems IV IDIQ contract, has an expected value in excess of \$25 million, and it is therefore within our jurisdiction to review protests of orders placed under Department of Defense multiple-award IDIQ contracts. 10 U.S.C. § 3406(f)(2).

importance of the evaluation factors and subfactors. We have considered all of the protester's allegations and find no basis to sustain the protest.

#### Pricing of Technical Data

CymSTAR contends that the FOPR is internally inconsistent as to whether the contractor or the agency will incur the cost of acquiring the technical data needed for performance from the T-7A APT program contractor because the FOPR states that agency consent is required before the contractor may enter into a subcontract to acquire certain T-7A data, but the FOPR does not include a CLIN for procuring this data. Protest at 11-12. The protester further asserts that this alleged patent ambiguity prevents offerors from competing on a common basis. *Id.* at 13. The agency responds that the solicitation is not ambiguous, and the FOPR provides for a cost/price evaluation on a common basis. MOL at 6-12. We address each argument below.

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. *TRAX Int'l Corp*, B-410441.14, April 12, 2018, 2018 CPD ¶ 158 at 6. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. *Id.*

CymSTAR's argument is premised on the fact that the FOPR includes FAR clause 52.244-2, Subcontracts, and the solicitation states that the contractor is required to obtain consent before issuing a subcontract that includes acquiring technical data related to the T-7A aircraft system or the ground-based training system. Protest at 11-12. However, despite this, the FOPR does not include a cost-reimbursable CLIN for acquiring T-7A data. *Id.* According to the protester, the inclusion of the FAR clause requiring agency consent for any subcontract to acquire data contradicts the portions of the FOPR stating that T-7A data will be provided to the contractor by the agency or the T-7A APT program contractor. *Id.* at 12.

In advancing its arguments, the protester ignores aspects of the solicitation package and fails to read the solicitation as a whole. As an initial matter, the T-7A MTS SOW states that the T-7A APT program contractor is required to provide technical data packages to the MTS contractor. SOW at 2. The FOPR also states that the agency will provide offerors with all relevant technical data in its possession. FOPR § L at 4. In addition, during the Q&A process, the agency advised offerors that it would provide updated T-7A technical data during performance. AR, Tab 57, 1st Set of Q&A at 10. Further, and as the protester acknowledges, the FOPR does not include a CLIN for acquiring T-7A data. When a potential offeror asked the Air Force to add a cost-type CLIN for this purpose, the agency declined and reiterated its position that the T-7A APT program contractor would provide data needed for performance pursuant to an ACA. AR, Tab 59, 3rd Set of Q&A. These aspects of the solicitation documents make it clear

that the required T-7A data will be provided to the MTS contractor due to the APT program contractor's contractual obligation, *i.e.*, at no cost.

Moreover, in response to a question from a potential offeror, the agency stated that the reason the FOPR includes FAR clause 52.244-2, Subcontracts, is to address acquiring technical data falling outside the scope of the data that the T-7A APT program contractor is contractually required to provide under its T-7A APT contract.<sup>12</sup> AR, Tab 59, 3rd Set of Q&A. As such, the inclusion of FAR clause 52.244-2, Subcontracts, does not create an ambiguity; the agency expressly stated that the clause was included to cover subcontracts to acquire data other than the T-7A technical data to be provided by the T-7A APT program contractor. CymSTAR's allegations are premised on an interpretation of the FOPR that unreasonably fails to read the solicitation as a whole.<sup>13</sup> Accordingly, we deny the protest.

For similar reasons, we also reject CymSTAR's allegation that the FOPR's cost/price evaluation criteria prevent offerors from competing on a common basis. The protester complains that Boeing has declined to provide the cost of procuring T-7A data needed for performance to all offerors except for PTC, and those offerors are unable to prepare complete and informed price proposals. Protest at 13. However, as discussed above, the FOPR does not contemplate the contractor incurring any costs to acquire the relevant T-7A data from Boeing; the data will be provided to the T-7A MTS contractor by the Air Force or Boeing at no cost.<sup>14</sup> As such, the total evaluated price does not include any cost associated with acquiring T-7A data from the T-7A APT program contractor. MOL at 11 (*citing* AR, Tab 18, FOPR attach. 6, Price Workbook). Given that offerors are not required or expected to propose a price for acquiring T-7A data from Boeing, the FOPR does not prevent offerors from competing on a common basis.

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<sup>12</sup> The agency states that the only T-7A technical data that would fall outside the scope of the T-7A APT program contract would be technical data developed as part of independent research and development--not data generated under the T-7A APT program contract. COS at 12.

<sup>13</sup> We note that information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and provided to all offerors (*i.e.*, the Q&A) meets all of the essential elements of an amendment and is sufficient to operate as such--even where not designated as an amendment. *Linguistic Sys., Inc.*, B-296221, June 1, 2005, 2005 CPD ¶ 104 at 2.

<sup>14</sup> CymSTAR does not allege that Boeing told CymSTAR or any other offeror that it would charge a fee for access to the data required for performance of the delivery order. The protester notes that a [DELETED] shows that PTC agreed to pay Boeing for [DELETED]. Supp. Comments at 3. However, the record shows that the [DELETED] pertains to data for a [DELETED], which is a separate product from the data needed for performance. AR, Tab 64, [DELETED] at 1. Moreover, regardless of whether the data for the [DELETED] overlaps with the data required for performance, the record demonstrates that Boeing will not charge the MTS contractor for the data required for performance.

## Unequal Access to Information OCI

The protester argues that PTC's relationship with Boeing gives PTC an unfair competitive advantage and creates an unequal access to information OCI. Protest at 16. More specifically, CymSTAR asserts that Boeing is providing PTC with exclusive access to Boeing's T-7A data that is necessary for performance, as well as the pricing associated with that access, and the protester maintains the agency has not adequately investigated or mitigated the resulting OCI. Comments at 11-12. The agency responds that no OCI exists because the allegation concerns information shared between private parties. MOL at 12-13. The Air Force also states that it mitigated any potential informational imbalance by providing technical data to all offerors and not including data acquisition as an aspect of the evaluation criteria. *Id.* at 14.

As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. FAR 9.505(b), 9.505-4; *Federal Info. Sys, Inc.*, B-421567, B-421567.2, July 5, 2023, 2023 CPD ¶ 153 at 4. As the FAR makes clear, the concern regarding this category of OCI is preventing the unfair competitive advantage that a firm may gain based on its possession of "[p]roprietary information that was obtained from a Government official without proper authorization," or "[s]ource selection information . . . that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract." FAR 9.505(b).

The FAR recognizes that conflicts may arise in factual situations not expressly described in the relevant FAR sections, and it advises contracting officers to examine each situation individually and to exercise "common sense, good judgment, and sound discretion" in assessing whether a significant potential conflict exists and in developing an appropriate way to resolve it.<sup>15</sup> FAR 9.505. As relevant here, our Office has recognized that, "where information is obtained by one firm directly from another firm . . . this essentially amounts to a private dispute between private parties that we will not consider absent evidence of government involvement." *Management Scis. for Health*, B-416041, B-416041.2, May 25, 2018, 2018 CPD ¶ 197 at 5; *The GEO Grp.*,

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<sup>15</sup> The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting officer. *Alliant Techsystems, Inc.*, B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 4. We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Federal Info. Sys, Inc.*, *supra* at 4.



*Inc.*, B-405012, July 26, 2011, 2011 CPD ¶ 153 at 6; *Ellwood Nat'l Forge Co.*, B-402089.3, Oct. 22, 2010, 2010 CPD ¶ 250 at 3.

Here, Boeing has access to certain data through its performance of the T-7A APT program contract. Namely, under the T-7A APT program contract, Boeing is generating an MTS data package that will be used by the MTS contractor during performance. AR, Tab 71, T-7A APT Program Contract at 173; SOW at 2. CymSTAR argues that Boeing has provided PTC with access to the data--as well as the pricing of the data--and such access provides PTC with an unfair competitive advantage. Protest at 15-17; Supp. Comments at 6.

We have reviewed the record and have no basis to question the agency's conclusion that Boeing's provision of T-7A data and pricing information to PTC, as well as the proposed subcontract between Boeing and PTC, does not give rise to an unequal access to information OCI. As an initial matter, the agency has provided a portion of the T-7A data required for performance of the MTS task order to all offerors in the data library (FOPR § L at 4), and CymSTAR has not identified, what if any, data that it believes is necessary for proposal preparation is missing from the data library.<sup>16</sup> By providing the data to all offerors, the agency has minimized any advantage PTC may have obtained through obtaining such data via its relationship with Boeing. See *Dayton T. Brown, Inc.*, B-402256, Feb. 24, 2010, 2010 CPD ¶ 72 at 6 (finding any unfair competitive advantage an offeror may have obtained by developing protocols under a related contract was minimized by the agency's release of the protocols to all offerors).

Additionally, to the extent that PTC's relationship with Boeing gave rise to a potential unequal access to information OCI, the agency neutralized the potential OCI by not including the procurement of technical data as a consideration in the evaluation of technical or price proposals.<sup>17</sup> The Air Force has also put measures in place to ensure that the data necessary for performance will be provided to the successful offeror at no cost to the contractor. Because the acquisition of technical data is not a consideration in the price evaluation scheme, and because it will be provided to the MTS contractor at no additional cost, PTC's relationship with Boeing does not provide PTC with an unfair competitive advantage. Accordingly, the protester's allegation is denied.

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<sup>16</sup> Instead, the protester complains that Boeing has provided data to PTC beyond what is included in the data library. Supp. Comments at 3. However, as noted above, the record demonstrates that (1) the data Boeing has agreed to provide PTC pertains to a [DELETED], which is a separate product from the data needed for performance (AR, Tab 64, [DELETED] at 1) and (2) Boeing will not charge the MTS contractor for the data required for performance.

<sup>17</sup> The Air Force states that it intends to share all relevant technical data in its possession with each offeror, and it is unable to prohibit Boeing from sharing its data with other private companies. MOL at 13-14.

## Relative Weight of Evaluation Factors and Subfactors

CymSTAR argues that the solicitation does not comply with the requirements of FAR part 16. As relevant here, FAR section 16.505(b)(1)(iv)(C) requires, for orders in excess of \$6 million, the “[d]isclosure of the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance.” Protest at 17. The protester asserts that the FOPR violates this requirement because it does not identify the relative importance of the technical subfactors and does not establish the relative importance of the evaluation factors (technical and price) in the best-value tradeoff. *Id.*

The agency responds that the FOPR complies with the applicable FAR section. First, with respect to the relative importance of the technical subfactors, the agency states that the FOPR’s silence on this issue means that the subfactors will be treated equally. MOL at 15. As for the weight of the evaluation factors in the tradeoff, the Air Force acknowledges that the FOPR does not expressly state that one factor is more important, but the agency asserts that by stating that the agency may select a higher-priced proposal for award, the FOPR implies that the technical factor is more important. *Id.* at 15.

With respect to the relative weight of the technical subfactors, we agree with the Air Force that the FOPR’s silence on the issue means the subfactors are equally important. MOL at 15 (*quoting Gunnison Consult. Grp., Inc.*, B-418876 *et al.*, Oct. 5, 2020, 2020 CPD ¶ 344 at 9). Our Office has stated that when a solicitation does not disclose the weight of subfactors, “the agency has effectively committed itself to giving equal weight to those factors in the evaluation.” *IDS Int’l, supra*, at 7-8.

CymSTAR contends that our decision in *IDS International* is inapplicable here because it pertained to a solicitation issued under FAR part 15, and the FOPR was issued pursuant to FAR subpart 16.5. Comments at 13. We find the protester’s argument unavailing because the standard applied by our Office in *IDS International* relies on analyses and conclusions that predate the promulgation of the FAR.<sup>18</sup> See *University of New Orleans*, B-184194, May 26, 1978, 78-1 CPD ¶ 401 at 10 (“While the [solicitation] did not contain any explicit statement as to the relative importance of cost and technical factors. . . . Absent any contrary indication in the [solicitation], they would therefore be accorded substantially equal weight.”); see also *Dikewood Servs. Co.*, B-186001, Dec. 22, 1976, 76-2 CPD ¶ 520 (stating that because the solicitation did not specify the

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<sup>18</sup> We also note that FAR part 15 contains analogous language to FAR section 16.505(b)(1)(iv)(C). Specifically, FAR section 15.204-5(c) requires solicitations to “[i]dentify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance.” CymSTAR has not identified any material difference between FAR section 16.505(b)(1)(iv)(C) and section 15.204-5(c), and we see no reason why the standard our Office has applied to solicitations issued in negotiated procurements would not apply to a solicitation issued in a FAR part 16 task or delivery order competition.

relative importance of the evaluation factors, offerors could reasonably assume they were equally important).

For the same reason, we find the solicitation does not violate FAR section 16.505(b)(1)(iv)(C) by failing to explicitly disclose the weight of the evaluation factors in the tradeoff decision. As noted above, under the heading “Relative Order of Importance for Tradeoff,” the FOPR provides:

A tradeoff may result in an award to a higher rated, higher priced Offeror, where the decision is consistent with the evaluation factors, and the [source selection official] reasonably determines that the technical approach of the higher priced offer outweighs the price difference. The Government reserves the right to award to a higher priced Offeror if that Offeror’s proposal is determined to represent the best value to the Government.

FOPR § M at 3. As the agency acknowledges, the FOPR does not expressly state that either factor is more important. MOL at 15. Stated differently, the FOPR is silent on the issue. As such, we disagree with the Air Force’s assertions that the FOPR implies that the technical factor is more important. Rather, just as with the subfactors, the FOPR’s silence on the question of the relative importance of the cost/price and technical evaluation factors means that they are to be considered equally important.<sup>19</sup> *IDS Int’l, supra*.

In sum, we conclude that the solicitation does not violate FAR clause 16.505(b)(1)(iv)(C) because by not specifying which factor is more important in the tradeoff decision, the agency has committed itself to giving equal weight to the factors in the evaluation. We therefore find no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>19</sup> To the extent that the Air Force intends for the technical factor to be more important in the tradeoff determination, the agency should amend the FOPR.