

## Decision

**Matter of:** PAE Aviation and Technical Services, LLC--Reconsideration

**File:** B-418828.7

**Date:** June 8, 2021

---

Anuj Vohra, Esq., Christian N. Curran, Esq., and William B. O'Reilly, Esq., Crowell & Moring LLP, for the protester.

J. Alex Ward, Esq., W. Jay DeVecchio, Esq., James A. Tucker, Esq., Alissandra D. Young, Esq., and Lyle F. Hedgecock, Esq., Morrison & Foerster LLP, for Vertex Aerospace, LLC, the intervenor.

Jason B. Nelson, Esq., Deborah N. Borges, Esq., Christopher B. Erly, Esq., Kristina Hogan, Esq., and Sarah M. Erly, Esq., Department of the Navy, for the agency.

Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Request for reconsideration is denied where the underlying decision did not contain any error of fact or law.

---

### DECISION

PAE Aviation and Technical Services, LLC, of Arlington, Virginia, requests reconsideration of our decision denying its protest challenging the Department of the Navy's issuance of a task order to Vertex Aerospace, LLC, of Madison, Mississippi, under fair opportunity submission request (FOSR) No. N00421-20-TO-0001, for maintenance and logistics support. PAE argues that our decision erroneously denied its protest allegation that the Navy unfairly conducted interchanges.

We deny the request.

### BACKGROUND

On December 20, 2019, the Navy issued the solicitation against its Contracted Maintenance, Modification, Aircrew and Related Services (CMMARS) multiple-award, indefinite-delivery, indefinite-quantity contract to procure maintenance and logistics support services for F-5N/F and F-16A/B aircraft. Agency Report (AR), Tab 4, Conformed FOSR at 1. The FOSR used the ordering procedures set forth in Federal

Acquisition Regulation (FAR) 16.505. *Id.* The FOSR contemplated the issuance of a hybrid task order with fixed-price, cost, and labor-hour line items. *Id.* at 2.

The FOSR contemplated a multi-step evaluation process considering the following factors: task order administration, contract experience, planned small business participation, program execution, and cost/price. Conformed FOSR at 23. The Navy would sequentially evaluate the task order administration, contract experience, and planned small business participation factors on pass or fail bases. *Id.* A proposal receiving passing ratings under each of those factors would then be evaluated under the program execution factor and assigned a confidence rating. *Id.* at 24. Award would be made on a best-value tradeoff basis considering the program execution and cost/price factors. *Id.* at 22-23.

As relevant here, the FOSR advised that the Navy may conduct oral or written “interchanges” with one or more offerors, in response to any evaluation factor, or any aspect of the submission. FOSR at 22. Interchanges were defined as requests for revisions to enhance the agency’s understanding of the proposals, or to facilitate the agency’s evaluations. *Id.* While offerors would be treated fairly, the FOSR provided that interchanges would not be conducted with every offeror, and that all interchanges would not be of the same nature or depth. *Id.* Additionally, the FOSR advised that the agency may conduct interchanges with only the offerors considered to have the highest potential of receiving award. *Id.*

Six offerors, including PAE and Vertex, submitted proposals prior to the close of the solicitation period. Combined Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 7. The agency conducted interchanges with the awardee and some of the other offerors, but did not conduct any interchanges with PAE. *Id.* at 8; *see also* AR, Tab 7, Interchange Memorandum at 2496-99.

The agency evaluated both PAE and Vertex as acceptable under the task order administration, contract experience, and planned small business participation factors. AR, Tab 9, Adversary Decision Memorandum (ADM) at 2547-48. PAE’s proposal was assigned a rating of “limited confidence” for the program execution factor against an evaluated price of \$586,057,296. *Id.* at 2550-51. Vertex’s proposal was assigned a “satisfactory confidence” rating for the program execution factor against an evaluated price of \$534,872,306. *Id.* The agency compared the two proposals and concluded that Vertex represented the better value due to its significantly lower evaluated price and higher-rated technical proposal. *Id.* at 2551.

PAE challenged the agency’s decision to issue the task order to Vertex in a protest filed with our Office on December 7. Protest at 1. Among other allegations,<sup>1</sup> PAE argued that the Navy’s issuance of the task order was procedurally improper because the Navy never conducted any interchanges with PAE. Protest at 17-22. Specifically, PAE

---

<sup>1</sup> PAE also argued that the Navy unreasonably evaluated proposals, and improperly made the source selection decision. Protest at 22-52, 55.

argued that the Navy identified weaknesses in the firm's technical approach, and that it should have had an opportunity to revise its proposal similar to the other offerors. *Id.* at 19-20. Additionally, PAE argued that the Navy relaxed material requirements when evaluating Vertex's proposal, and that PAE should have been given an opportunity to revise its proposal in accordance with the changed requirements. *Id.* at 52-55.

The Navy responded that the FOSR did not require the agency to conduct interchanges with each firm. COS/MOL at 14. The Navy explained that it did not conduct interchanges to enable any offeror to revise technical shortcomings. *Id.* at 15. Indeed, with regard to Vertex, the Navy explained that it permitted the firm to simply correct a discrepancy between the firm's price and technical approach. *Id.* Further, the Navy explained that it chose not to conduct interchanges with PAE due to the firm's much higher evaluated price relative to the other offerors. *Id.* at 16. The Navy also explained that it did not relax any material solicitation requirements, and therefore it did not unfairly conduct interchanges on that basis. *Id.* at 49-50. PAE responded that the agency's conduct was unfair because the agency effectively allowed Vertex to revise a deficiency in the firm's proposal. Comments at 25-29.

After we reviewed the record, our Office denied PAE's challenge.<sup>2</sup> See *PAE Aviation and Tech. Servs., LLC*, B-418828.3, Mar. 17, 2021, 2021 CPD ¶ 153. Our Office noted that the FOSR permitted the agency to conduct interchanges with only the offerors capable of providing the best value to the agency. *Id.* We also noted that the Navy did not conduct interchanges with PAE because the Navy concluded that its more expensive proposal offered less potential value than Vertex's proposal. *Id.* at 10. As a result, we determined that the agency's conduct was fair because it was consistent with the terms of the solicitation and premised on the agency's conclusion that PAE's proposal was unlikely to offer the best value. *Id.*

## DISCUSSION

In its request for reconsideration, PAE asserts our Office committed a legal error when determining that the agency reasonably did not conduct any interchanges with the firm. Req. for Recon. at 2. PAE argues that our determination was irreconcilable with another decision issued by our Office concluding that the Navy did not fairly conduct interchanges with regard to the same acquisition. See *AECOM Mgmt. Servs., Inc.*, B-418828.4 *et al.*, Mar. 17, 2021, 2021 CPD ¶ 152 at 4-6. According to PAE, both its argument and the protester's argument in *AECOM Mgmt. Servs.* were "substantively identical," and our Office committed legal error by concluding that the agency's actions were reasonable in one decision but not in the other. Req. for Recon. at 5-7.

---

<sup>2</sup> Our Office took jurisdiction of the underlying protest, and this request for reconsideration, because the task order was issued against the Navy's CMMARS multiple award, indefinite-delivery, indefinite-quantity contract, and the value of the task order exceeded \$25 million. 10 U.S.C. § 2304c(e)(1)(B).

To obtain reconsideration under our Bid Protest Regulations, the requesting party must set out the factual and legal grounds upon which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a). Here, we conclude that the protester's request does not warrant reconsideration.

Our Office did not commit any legal error because we correctly reviewed whether the agency's conduct was fair. See *DevTech Sys., Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 at 8 ("Although the regulations concerning discussions in procurements conducted pursuant to FAR part 15 do not, as a general rule, govern task order competitions conducted pursuant to FAR subpart 16.5, when an agency engages in exchanges with vendors in task order competitions, such exchanges must be fair."). Indeed, we determined that the Navy's decision not to conduct interchanges with PAE was fair because the FOSR permitted the Navy to conduct interchanges with only those offerors capable of providing the best value, and the Navy determined that PAE's proposal did not meet that threshold due to its relatively high evaluated price and issues with the firm's technical approach. See *PAE Aviation and Tech. Servs.*, *supra* at 9-10. Thus, because our analysis applied the correct standard, we conclude that our Office did not commit legal error when determining that the agency's conduct was reasonable.

As to PAE's complaint that our decision contains legal error because it is irreconcilable with *AECOM Mgmt. Servs.*, we do not find that position persuasive. In contrast to the protester's argument, the decisions are consistent because the agency concluded that PAE's and AECOM's competitive positions were different. See AR, Tab 9, ADM at 2551. Whereas AECOM's evaluated price (\$535,407,745) was very close to the awardee's price (\$534,872,306), PAE's evaluated price (\$586,057,296) was much higher and therefore unlikely to provide the best value; additionally, PAE's technical approach was evaluated as the least favorable out of all offerors.<sup>3</sup> *Id.*; see also *AECOM Mgmt. Servs.*, *supra* at 3. Thus, we do not view our decision as containing any legal error in this regard because, given the terms of the solicitation, the agency's conduct can reasonably be viewed as fair when applied to PAE but unfair when applied to AECOM due to the competitive differences between the proposals. Accordingly, we deny the request for reconsideration.

The request for reconsideration is denied.

Thomas H. Armstrong  
General Counsel

---

<sup>3</sup> Moreover, even if the decisions were contradictory, we do not think that any contradiction would provide a basis to grant the firm's request. Although the decisions reviewed the agency's conduct regarding the same solicitation, the decisions were made independently, relied on different administrative records, and responded to varying legal arguments.