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**Comptroller General
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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Synectic Solutions, Inc.

File: B-299086

Date: February 7, 2007

Richard D. Lieberman, Esq., and Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, P.C., for the protester.

Andre Long, Esq., Department of the Navy, for the agency.

Jonathan L. Kang, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's technical and price evaluations is denied where the record supports the reasonableness of the evaluations.
 2. Protest challenging agency's determination not to conduct discussions is denied where the solicitation advised offerors that the agency intended to make award without conducting discussions, and the record establishes that the agency had a reasonable basis for making its source selection decision.
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DECISION

Synectic Solutions, Inc. (SSI) protests the Department of the Navy's award of a contract to Evolving Resources, Inc. (ERI) pursuant to request for proposals (RFP) No. N68936-04-R-0023 to provide information technology (IT) support services at the Naval Air Warfare Center, Point Mugu, California. SSI challenges the agency's evaluation of the offerors' technical and price proposals, the agency's determination not to conduct discussions, and the agency's cost/technical tradeoff.

We deny the protest.

BACKGROUND

The RFP was issued on December 27, 2004, restricting competition to participants in the Small Business Administration's (SBA) 8(a) program for small, disadvantaged businesses, and seeking proposals for a cost-reimbursement contract to provide IT support services including "full spectrum development, systems engineering,

systems integration, software support, and lifecycle support services for various communications, electronic, information technology, wireless technology, and command and control systems” for Navy fleet and range operational requirements. RFP, Statement of Work (SOW), at 62. As initially issued, the RFP established January 31, 2005 as the date for receipt of proposals. The agency subsequently amended the RFP to provide for receipt of proposals on February 11, 2005; a second amendment then changed the proposal due date to February 10, 2005.¹

The solicitation advised offerors that proposals would be evaluated on the basis of cost and the following equally-weighted non-cost evaluation factors: technical-management,² past performance, and experience.³ The technical-management evaluation factor was comprised of four equally-weighted subfactors: technical approach, management structure, communications approach, and key personnel/staffing. RFP § M, at 107-09. The solicitation advised offerors that the non-cost evaluation factors combined were “significantly more important than cost,” and provided that cost proposals would be evaluated for “fairness and reasonableness,” as well as for cost realism. *Id.* Finally, offerors were advised that “[t]he Government intends to evaluate proposals and award a contract without discussions.” *Id.*

Eight offerors, including SSI and ERI, submitted proposals by the specified closing date. Thereafter the agency evaluated the offerors’ various proposal submissions,⁴

¹ The amendment explained that February 11 was a “Compressed Work Schedule regular day off for personnel at Point Mugu, CA,” and that “the naval base contracting office will be closed that day.” RFP Amend. 2, at 2.

² Offerors were advised that, under the technical/management factor, proposals would be qualitatively evaluated as “outstanding,” “highly satisfactory,” “satisfactory,” “marginal,” or “unsatisfactory,” and that performance risk assessments of “low,” “medium,” or “high” would also be made. RFP § M at 107. Of relevance to this protest, the agency defined a “highly satisfactory” rating as applicable to a proposal that “exceeds requirements in a way that benefits the [g]overnment or meets requirements and contains enhancing features which benefits the Government”; a “satisfactory” rating was defined as applicable where a proposal “meets requirements” and “[a]ny weaknesses are acceptable to the Government.” AR, Tab F, Competitive Award Panel Minutes, at 6.

³ With regard to the past performance and experience evaluation factors, offerors were advised that the agency would make risk assessments of “very low,” “low,” “moderate,” “high,” “very high,” and “unknown.” RFP § M at 107.

⁴ On July 14, 2005, the agency requested that offerors extend their proposals through November 30, 2005. On November 2, 2005, the agency requested that offerors extend their proposals through February 30, 2006. On February 7 and July 20, 2006, the agency requested that offerors provide updated proposal information and extend

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with the following final results regarding ERI's and SSI's proposals:⁵

	SSI	ERI
Technical-Management (Score/Risk Rating)	Satisfactory/ Low Risk	Highly Satisfactory/ Low Risk
Technical Approach	Satisfactory/ Low Risk	Highly Satisfactory/ Low Risk
Management Structure	Satisfactory/ Low Risk	Highly Satisfactory/ Low Risk
Communications Approach	Satisfactory/ Medium Risk	Highly Satisfactory/ Low Risk
Key Personnel/ Staffing	Marginal/ Medium Risk	Highly Satisfactory/ Low Risk
Past Performance	Low Risk	Very Low Risk
Experience	Medium Risk	Low Risk
Evaluated Cost	[deleted]	\$23,695,334

Agency Report (AR) at 6-7; Tab G, Source Selection Decision, at 4-6.

As shown in the table above, ERI's proposal was rated higher than SSI's proposal under each of the non-cost evaluation factors and subfactors. Specifically, with regard to the first technical-management subfactor, technical approach, the solicitation stated that proposals would be evaluated to determine an offeror's "understanding of the technical support requirements" and how well the proposal "demonstrates how the work will be performed." RFP § M, at 108. Under this subfactor, the agency evaluated ERI's proposal as "highly satisfactory" with "low" proposal risk on the basis that it "consistently demonstrated approaches that exceeded the solicitation requirements." AR, Tab C, Business Clearance Memorandum, at 144. The agency's evaluation elaborated that ERI's proposal:

showed a clear understanding of how to support the SOW elements that might be classified as 'traditional' IT support (i.e. management support, logistics, databases, CM/DM, training, computer security, etc.), and also demonstrated a comprehensive approach to supporting

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their proposals through August 31, 2006. SSI has not argued that any of the agency's actions constituted discussions, specifically stating that the Navy "refused to conduct discussions." Protest at 12.

⁵ The agency's evaluation of the six other offerors' proposals are not relevant to resolution of this protest; accordingly, those proposals and the agency's evaluation of them are not further discussed.

IT elements of the SOW tied to specialized engineering workgroups (i.e. testing and evaluation, engineering environment, and wireless security).

Id.

In contrast, the agency evaluated SSI's proposal as "satisfactory" under this subfactor, explaining that the proposal "falls short of demonstrating approaches that cover the full spectrum of engineering IT services this contract entails, particularly in some specialized areas of testing and evaluation, transition support, the engineering environment and wireless security." Id. at 145. The evaluators elaborated that SSI's proposal solutions "center[ed] almost exclusively on [deleted]," noting that the Naval Air Warfare Center "presently utilizes many other DBMS [data base management system] designs (i.e. [deleted])," and concluded that SSI's [singular [deleted] solution . . . is a concern in determining how extensively they understand applicable software other than [deleted]." AR, Tab F, Competitive Award Panel Minutes, at 8.

With regard to the second technical-management subfactor, management structure, the solicitation provided for evaluation of an offeror's "organizational structure and lines of authority, specifically, who reports to whom, and who is responsible for what under the contract statement of work." RFP § M, at 108. Under this subfactor, the agency again evaluated ERI's proposal as "highly satisfactory" with "low" risk, stating: "ERI and its subcontractors . . . provide[] both core personnel expertise as well as an extended consultant pool available for specialized technical expertise which is needed to handle rapidly evolving requirements inherent in working RDT&E [research development testing & evaluation] projects." AR, Tab C, at 144. In contrast, the agency evaluated SSI's proposal as "satisfactory" under this subfactor, explaining that "there are some concerns regarding [SSI's] having a thin management structure, [deleted]." Id. at 145.

With regard to the third technical-management subfactor, communications approach, the solicitation provided for evaluation of the offeror's "method of addressing communications and operations challenges as they relate to the areas of avionics, threat simulation, and asymmetric warfare."⁶ RFP § M, at 108. Under this subfactor, the agency again rated ERI's proposal as "highly satisfactory" with "low" risk, specifically addressing each of the three evaluation areas identified in the solicitation as follows:

For avionics, [ERI's] approaches utilize existent system platforms . . . and established test methods to handle these challenges economically and provide added value to the contract. For threat simulation ERI's

⁶ Asymmetric warfare refers to threats outside the range of conventional warfare, including terrorism. AR at 15.

approaches utilize sophisticated modeling and simulation coupled with existent EW [electronic warfare] sensor systems to simulate real-world threats and stimulate sensors without requiring the presence of actual threats. This significantly lowers the cost of testing and evaluation and adds value to the contract. For asymmetric warfare ERI has developed expertise in handling special challenges involved in AW [asymmetric warfare], including simulation, network security and communications between multiple DoD and non-DoD agencies. This greatly reduces the cost of conducting full-scale asymmetric warfare exercises and adds value to the contract. ERI identifies the complexity of AW including the spiral nature of hardware and software management to support the AW exercises which the ERI Team clearly identifies as the most challenging area. ERI provides innovative comprehensive approaches to handling those AW operational and communications challenges, including realistic scenario driven exercises which provide added value to the government.

AR, Tab C, at 144.

In contrast, the agency evaluated SSI's proposal as "satisfactory" with "medium" risk under this subfactor, stating that although SSI's proposal "showed a clear understanding of the complex nature of asymmetric warfare," SSI "seemed to lack a detailed understanding of some aspects of avionics and threat simulation outside the area of communications, and also fell short in demonstrating well structured methods of handling the asymmetric challenges." Id. at 145.

With regard to the fourth technical-management subfactor, key personnel/staffing, the solicitation provided for evaluation of personnel with regard to "qualifications, educational levels, experience, licenses and/or certificates, technical skills, familiarity with avionics and asymmetric warfare communication systems, and availability." RFP § M, at 108. Under this subfactor, the agency again evaluated ERI's proposal as "highly satisfactory" with "low" performance risk, stating that: "[ERI's] key personnel possess very specialized knowledge in areas of avionics, secure communications and asymmetric warfare. These sources of expertise are rare which is an enhancing feature that benefits the government." AR, Tab C, at 144. In contrast, the agency evaluated SSI's proposal as "marginal" with "medium" risk, stating: "[SSI's] lack of key personnel having relevant expertise in specialized areas of Avionics and Asymmetric Warfare present a risk in being able to successfully perform some areas specified with the SOW. This risk could potentially cause some disruption of schedule, increase in cost or degradation of performance." Id. at 145.

With regard to the past performance evaluation factor, the solicitation provided for evaluation of an offeror's prior performance of "the same or very similar" requirements, specifically advising offerors that the agency "will give more consideration, and a more favorable rating, to information that demonstrates quality of performance for requirements with the same or very similar scope, dollar value,

and complexity relative to the procurement under consideration.” RFP § M, at 108. Under the past performance factor, the agency evaluated ERI’s proposal as “very low” risk, noting that, as the incumbent contractor, ERI’s past performance has been exceptional and that the prior work it has performed has been very similar to the solicited requirements with regard to scope, dollar value, and complexity. AR, Tab C, at 147. In contrast, although SSI’s prior performance was generally assessed by SSI’s prior customers as reflecting “very low performance risk,” the agency concluded that SSI’s prior work was only “somewhat similar” to the solicited requirements. Id. at 148. Accordingly, SSI’s proposal was rated as “low,” rather than “very low,” risk.⁷ Id.

Overall, the agency concluded that ERI’s proposal was “clearly superior” to SSI’s under each of the non-cost evaluation factors, and “especially in the critical areas of avionics, threat simulation and asymmetric warfare systems.” Id. at 151. The agency further recognized that “[t]here is a premium of [deleted] for cost as compared to SSI’s proposed cost,” but concluded that, in light of the greater weight afforded by the solicitation to non-cost factors, ERI’s proposal offered the best value to the government. Id. Accordingly, ERI’s proposal was selected for award; this protest followed.

DISCUSSION

Technical-Management Evaluation

SSI first protests that the agency’s evaluation of SSI’s and ERI’s proposals reflected unstated evaluation factors, complaining that it was improper for the agency to criticize SSI’s failure to meaningfully address asymmetric warfare because the asymmetric warfare requirements constituted only “a minor, if not insignificant part” of the total contract requirements. Protest at 8.

⁷ Similarly, under the experience evaluation factor, for which the solicitation stated that offerors would be evaluated on the “depth and breadth” of their prior experience involving work with the “same or very similar scope, dollar value, and complexity as this requirement,” RFP § M at 109, SSI’s proposal was rated as presenting a higher risk than ERI’s proposal due to the agency’s conclusions that: “SSI did not sufficiently demonstrate that they have extensive engineering systems experience in communications hardware & software related to avionics systems, asymmetric warfare and wireless security”; SSI’s “breadth of experience in asymmetric warfare is minimal”; and that SSI was “lacking significant experience within some areas of engineering, avionics, asymmetric warfare and security.” AR, Tab C, at 149.

The evaluation of technical proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In reviewing a protest against an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

Here, contrary to SSI's assertion that solicitation requirements regarding asymmetric warfare constituted only a "minor" or "insignificant" portion of the contract, two of the four subfactors under the technical-management evaluation factor specifically identified asymmetric warfare as one of a very limited number of areas in which proposals would be evaluated. As discussed above, under the third technical-management subfactor, communications approach, the solicitation provided for evaluation of the offeror's "method of addressing communications and operations challenges as they relate to the areas of avionics, threat simulation and asymmetric warfare." RFP § M, at 108. Similarly, under the fourth technical-management subfactor, key personnel/staffing, the solicitation specifically stated that an offeror's key personnel would be evaluated with regard to their "familiarity with avionics and asymmetric warfare communication systems." *Id.* Accordingly, there is no merit to SSI's assertion that, in identifying weaknesses in its proposal regarding asymmetric warfare, the agency applied unstated evaluation factors.⁸

SSI also protests that the agency improperly evaluated SSI's proposal for having "a thin management structure, [deleted]." *Id.* at 145. SSI does not dispute the accuracy

⁸ SSI similarly protests that the agency applied unstated evaluation criteria in criticizing SSI's proposal for focusing on [deleted] software and failing to recognize other required software tools, complaining that the solicitation did not specifically mention the other software tools for which support will be required. SSI Comments, Dec. 11, 2006, at 8. As noted above, the solicitation specifically advised offerors that, in evaluating their proposed technical approach, the agency would assess the extent to which an offeror's proposed approach "demonstrates an understanding of the technical support requirements." RFP § M, at 108. SSI does not dispute that support for software tools other than [deleted] will be required during contract performance including, as stated in the SOW, various agency legacy systems; nor does SSI dispute the agency's assessment that its proposal failed to meaningfully address these other tools. On this record, we have no basis to question the agency's criticism that SSI's proposal failed to demonstrate an understanding of technical support requirements for software tools other than [deleted].

of the agency's description;⁹ rather, SSI asserts that the agency's assessment was "inappropriate," because "it is recognized that this is an 8(a) procurement, and offerors are not expected to have a deep management structure." Protester Comments, Dec. 11, 2006, at 8.

As noted above, the solicitation provided for evaluation of an offeror's "organizational structure and lines of authority, specifically, who reports to whom, and who is responsible for what under the contract statement of work." RFP § M, at 108. Further, the solicitation stated that proposals would be evaluated to determine whether it "clearly demonstrates the Offeror's ability to meet all of the requirements." *Id.* On this record, we have no basis to question the agency's expression of concern regarding SSI's proposed management structure, notwithstanding the fact that this is an 8(a) procurement. In sum, we have reviewed all of SSI's arguments regarding the agency's technical-management evaluation and find no merit in them.

Past Performance

Next, SSI protests the agency's evaluation with regard to the past performance evaluation factor. In this regard, SSI asserts that the agency improperly evaluated its proposal as "low" risk, rather than "very low" risk.

The evaluation of an offeror's past performance, including the agency's determination of the relevance and scope of an offeror's performance history, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, undocumented, or inconsistent with applicable statutes or regulations. Family Entm't Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5.

Here, as discussed above, the solicitation specifically provided that in evaluating past performance, the agency would "give more consideration, and a more favorable rating" for performance of prior work "with the same or very similar scope, dollar value and complexity relative to the procurement under consideration." RFP § M, at 108. The record further shows that the agency concluded that the prior work on which SSI relied for its past performance evaluation was only "somewhat similar" to the contract requirements at issue here. SSI has not meaningfully challenged the agency's characterization of its prior work. Accordingly, we find nothing

⁹ Indeed, in response to a similar agency criticism that SSI lacked relevant expertise in specialized areas of avionics and asymmetric warfare, SSI effectively acknowledged that only [deleted] of SSI's [deleted] key personnel provided information regarding experience in avionics. Protester Comments, Dec. 11, 2006, at 8.

unreasonable in the agency's assessment of "low" risk with regard to SSI's past performance.

Price Reasonableness Determination

Next, SSI protests that the agency failed to properly perform a price analysis as required by Federal Acquisition Regulation (FAR) § 15.404-1. In this regard, SSI does not dispute that the agency conducted a proper cost realism analysis, during which the agency evaluated various elements of the offerors' proposed costs; nonetheless, SSI asserts that the procurement was flawed based on the agency's alleged failure to comply with the separate FAR requirements regarding price analysis. We disagree.

Here, the agency received eight proposals and concluded that at least three of these proposals, including SSI's and ERI's, met the solicitation requirements. The agency noted during its evaluation that all three of the proposals meeting the solicitation requirements offered prices that were lower than the independent government cost estimate and, further, that these three proposals were priced within a [deleted] percent range of each other. Supplemental Agency Report (SAR), Tab A, Declaration of Contracting Officer; Tab D, Independent Government Cost Estimate (IGCE). On this record, assuming a separate price reasonableness analysis was required, there is no basis to assert that the agency failed to comply with any FAR requirements since the agency compared proposed prices between the three acceptable proposals, as well as the IGCE.

ERI's 8(a) Status

SSI also complains that award to ERI was improper because the date for receipt of proposals was 2 days before ERI's 8(a) status was to expire. The agency set an initial date for receipt of proposals on January 31, 2005, then modified that date to February 11, 2005, and again to February 10, 2005. RFP, amends. 1, 2. The protester states that ERI's 8(a) term of participation was due to expire on February 12, 2005.

With regard to the award to ERI, SBA regulations state that an offeror's status as an 8(a) contractor is determined as of the date the offeror submits a written self-certification that it is small to the procuring activity as part of its initial offer. 13 C.F.R. § 121.404(a), (b). SBA regulations further state that an award may be made to an offeror whose 8(a) program term has expired, provided that it was an 8(a) program participant eligible for contract award on the initial date specified for

receipt of offers.¹⁰ 13 C.F.R. § 124.507(d). Here, ERI's timely submitted proposal was eligible for award.¹¹

Source Selection Determination

Next, SSI protests that the agency's source selection was improperly based on a "mechanical" comparison of offerors proposals that failed to justify ERI's higher cost. We disagree. As discussed above, the SSD explained that, in addition to the ERI's higher ratings for all evaluation factors and subfactors, ERI's proposal had specific advantages over SSI's proposal in the critical areas of avionics, threat simulation and asymmetric warfare systems, and that ERI's past performance and experience were superior to SSI's based on its very low risk ratings for very similar contract work. *Id.* at 14. Further, the agency specifically concluded that the technical advantages of ERI's proposal were worth the [deleted] percent cost premium as compared to SSI's proposal.

Where, as here, the RFP allows for a cost/technical tradeoff, the agency retains discretion to select a higher-priced, higher technically rated proposal if doing so is reasonably found to be in the government's best interest and is consistent with the solicitation's stated evaluation scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10. Based on the record, the agency's selection of ERI's proposal for award was reasonable.

Discussions

Finally, SSI contends that the agency improperly decided not to conduct discussions with offerors. SSI asserts that, had discussions been conducted SSI could have addressed the various weaknesses in its proposal.¹²

¹⁰ Although offerors submitted proposal revisions to extend their offers and update proposal information, such proposal submissions do not affect the validity of an offeror's initial proposal and 8(a) eligibility certification. 13 C.F.R. § 124.507(d).

¹¹ To the extent the protester argues that the agency's selection of the proposal due date reflected bad faith on the part of the agency, the record does not support this allegation. That is, the record does not establish that the agency acted with a malicious and specific intent to injure the protester. *See, e.g., Bannum, Inc.*, B-298281.2, Oct. 16, 2006, 2006 CPD ¶ 163.

¹² SSI also notes that, if the agency had conducted discussions and sought revised proposals, ERI would have had to recertify its 8(a) status and, apparently, would have been eliminated from the competition.

Where, as here, an RFP provides for award on the basis of initial proposals without discussions, an agency may make award without discussions, unless discussions are determined to be necessary. FAR § 15.306(a)(e). While discussions are necessary where the solicitation provides for award on a best value basis and the source selection official is unable to determine without further information which proposal represents the best value to the government, an agency may dispense with discussions where there is a reasonable basis to conclude that the proposal of the intended awardee represents the best overall value. Facilities Mgmt. Co., Inc., B-259731.2, May 23, 1995, 95-1 CPD ¶ 274 at 8. The contracting officer has broad discretion in deciding whether to hold discussions, which our Office will review only to ensure that it was reasonably based on the particular circumstances of the procurement. Incident Catering Servs., LLC, B-296435.2 et al., Sept. 7, 2005, 2005 CPD ¶ 193.

Here, as discussed above, the agency had a reasonable basis for evaluating proposals, for performing a meaningful comparison of the those proposals, and for making a determination regarding which proposal offered the best value to the government. See Sierra Military Health Servs., Inc.; Aetna Gov't Health Plans, B-292780 et al., Dec. 5, 2003, 2004 CPD ¶ 55 at 6-7 n.5. The decision not to conduct discussions was reasonable under the circumstances.

The protest is denied.¹³

Gary L. Kepplinger
General Counsel

¹³ In pursuing this protest, SSI has raised various collateral issues. For example, SSI notes that the positions of contracting officer and source selection authority (SSA) were held by the same person, and that this individual participated in the evaluation of proposals, and was the sole member of the panel which advised the SSA. Thus, the protester complains, “the SSA advised himself!” Protester’s Comments on the Agency Report, Dec. 11, 2006, at 6. There is, however, no prohibition on an SSA’s or contracting officer’s participation in the evaluation of proposals. Moreover, an SSA is required to exercise independent judgment in making a reasonable and adequately-documented source selection decision, and has broad discretion in determining the manner and extent to which technical and cost evaluation results are used, subject only to the tests of rationality and consistency with the evaluation criteria. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 13. We have reviewed all of the protester’s arguments, and conclude that none provides a basis for sustaining the protest.