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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: Smart Innovative Solutions

File: B-400323.3

Date: November 19, 2008

Joi R. Nolen, Esq., for the protester.

Sheryl Black for Global Commerce Solutions, an intervenor.

R. René Dupuy, Esq., Department of Labor, for the agency.

Cherie J. Owen, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that its proposal was improperly excluded from the competitive range is denied where the protester has not shown that the agency's evaluation was unreasonable or inconsistent with the stated evaluation criteria.

DECISION

Smart Innovative Solutions (SIS) of Columbia, Maryland, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DOL089RP20495, issued by the Department of Labor for administration of the Job Corps National Call Center. SIS argues that its proposal's exclusion from the competitive range was improper because the agency misevaluated its past performance and its technical and staffing proposals.

We deny the protest.

BACKGROUND

This protest involves a procurement where the agency received and evaluated 21 proposals before concluding that 7 of them would be included in the competitive range. The protester--1 of the 14 offerors whose proposals were not included in the competitive range--argues that the agency's evaluation of its proposal, and the agency's subsequent decision to exclude the proposal from further consideration, was unreasonable. For the reasons set forth in detail below, we disagree.

The RFP here was issued on February 27, 2008, and sought offers to operate the Job Corps National Call Center. The services contemplated under this contract include providing answers to frequently asked questions, referral information, fulfillment of product and service requests, and complaint intake. The successful offeror was to provide services to support web-enabled calling, e-mail, voice and fax communication, outbound services, and call transferring.

The RFP anticipated award to the offeror whose proposal presented the best value after evaluation in accordance with the stated factors. RFP at M-6. The evaluation factors were: (1) technical proposal, (2) staffing resources proposal, (3) past performance and relevant experience, and (4) cost/price proposal. Id. at M-1. The non-price evaluation factors, when combined, were more important than price. Id. at M-6.

Twenty-one firms, including the protester, submitted proposals by the due date of April 4, 2008. The technical evaluation panel (TEP), which consisted of three evaluators, evaluated the technical and staffing proposals. Agency Report (AR) at 2. The TEP members then presented their scoring sheets to the panel chair. The chairperson averaged the point scores assigned by each TEP member to arrive at a final TEP finding, and evaluated and verified the offerors' past performance and relevant experience proposals. The chairperson then compiled a final list of strengths and weaknesses for each offeror, and presented this report to the Contracting Officer (CO). CO Statement at 2 & 4.

The CO used the evaluation report in conjunction with the cost proposals to determine the competitive range, which consisted of the top seven ranked proposals. CO Statement at 4; AR, Tab 9. The proposal submitted by SIS was ranked eleventh. AR, Tab 9.

With respect to the protester's proposal, the agency identified several weaknesses. Of relevance here, the agency found that SIS's quality assurance plan lacked sufficient detail to determine whether performance outcomes would be met or whether the plan was tailored to the Job Corps target population. AR, Tab 7, at 6. The agency also found that, with regard to coordination with other Job Corps offices, SIS failed to provide a discussion of communication goals, and failed to provide enough information for the agency to determine the usefulness of SIS's proposed e-newsletter. Id. Further, the agency found that the protester's proposed site manager did not satisfy the educational requirements set forth in the RFP. Id. at 7. Finally, with regard to the past performance and relevant experience evaluation factor, the agency awarded SIS 12.5 points, out of a possible 25. The agency explained that it had conducted market research which indicated that there are two different kinds of call centers: those that only take information from callers on incoming calls, and those that handle both incoming and outbound calls. The agency considered SIS's past performance only partially relevant to the services required here because SIS had experience running only inbound calling centers, not calling

centers that both receive inbound calls and make outbound calls to customers, the type of services called for here. AR, Tab 7, at 7, CO Statement at 5.

By letter dated May 16, the agency notified the protester of the exclusion of its proposal from the competitive range. CO Statement at 2. The protester requested a debriefing, and the agency provided one on July 6. This protest followed.

DISCUSSION

SIS raises several challenges to the agency's evaluation of its proposal. First, it argues that the agency's technical evaluation was flawed because the TEP failed to produce a consensus report and because weaknesses noted in the evaluation report appeared to conflict with statements on the scoring sheets of an individual TEP member. SIS also argues that the agency improperly imposed an evaluation criterion that was not set forth in the solicitation. Further, SIS maintains that the agency's evaluation of its staffing proposal was flawed; specifically, SIS claims that it should not have been downgraded for proposing a site manager without a bachelor's degree, because the RFP did not require that the site manager have a degree. Finally, the protester argues that the agency incorrectly downgraded its proposal under the past performance and relevant experience evaluation factor because, although SIS has operated a call center, it has no experience with outbound calling services.

Technical Evaluation

With respect to the evaluation of its technical proposal, SIS maintains that because the TEP did not produce a consensus report, the agency's evaluation is flawed. SIS also argues that the unreasonableness of the agency's evaluation is evidenced by the fact that the evaluation report appears to contradict certain statements in one TEP member's scoring sheets.

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. Foster-Miller, Inc., B-296194.4, B-296194.5, Aug. 31, 2005, 2005 CPD ¶ 171 at 6. In reviewing an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination as to their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair, reasonable, and consistent with the evaluation criteria. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3. As with any evaluation review, our chief concern is whether the record supports the evaluators' conclusions. Innovative Logistics Techniques, Inc., B-275786.2, Apr. 2, 1997, 97-1 CPD ¶ 144 at 9.

As an initial matter, we are aware of no statute or regulation that requires an agency to create a consensus report in evaluating proposals, nor is there any requirement that every individual evaluator's scoring sheet track the final evaluation report. See Andrulis Corp., B-281002.2, June 2, 1999, 99-1 CPD ¶ 105 at 5 (a consensus score

need not be the same score as initially scored by the individual evaluators). In short, these matters alone will not lead our office to conclude that there was an impropriety in the agency's evaluation or a violation of procurement law or regulation.

More importantly, we have reviewed the record here, and, in our view, there is support for the weaknesses the agency noted in the protester's technical proposal. For example, offerors were asked to address how they would coordinate with Job Corps regional offices, outreach admissions, career transition services centers, the Job Corps data center, and the Job Corps media contractor. Offerors were also asked to address the challenges they could anticipate and identify strategies to address those challenges. In its evaluation, the agency noted as a weakness the fact that the proposal identified the project manager as the main point of contact for coordination, but failed to describe communication goals. AR, Tab 7, at 6. The agency also found that, while SIS proposed to use an e-newsletter to provide information about the call center, SIS did not provide enough information about the newsletter for the evaluators to assess its usefulness. Id.

As indicated above, we see no basis in the record to disagree with these assessments. The SIS proposal provided little information on how its e-newsletter would be used to help keep stakeholders informed. Further, the proposal stated that the Project Manager (PM) would be responsible for coordinating with stakeholders, but contained little explanation of how the PM would do so, other than to state that she would work to establish a schedule for meetings and reviews. AR, Tab 3, SIS Technical Proposal, at 15. Moreover, the proposal's response to explaining what challenges it anticipated in coordinating with other Job Corps entities was particularly unenlightening. The proposal simply stated that "one of the biggest challenges to coordinating with so many groups is the coordination of so many groups." Id.

To the extent that SIS also complains that the agency has imposed an unannounced evaluation criterion because two of its evaluated weaknesses involve its failure to address communication strategies, even though the RFP did not list communication as an evaluation factor, we disagree.

A solicitation must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors and significant subfactors set forth in the solicitation. Federal Acquisition Regulation (FAR) § 15.304(d); Akal Sec., Inc., B-271385, B-271385.3, July 10, 1996, 96-2 CPD ¶ 77 at 3. Agencies are required to identify evaluation factors and significant subfactors, but they are not required to identify all areas of each which might be taken into account provided that any unidentified areas are reasonably related to or encompassed by the stated criteria. MCA Research Corp., B-278268.2, Apr. 10, 1998, 98-1 CPD ¶ 129 at 8.

Here, we agree with the agency that how an offeror would communicate with the various organizations within the Job Corps was reasonably encompassed by the

stated requirement of coordination with other Job Corps offices, since it is unclear from the record how there could be coordination with other Job Corps offices without some communication.

Staffing Proposal

SIS also protests DOL's evaluation of its staffing proposal. In this regard, the RFP required that the proposed site manager have "a bachelor's degree and a minimum of three years related experience in communications systems and business administration or five years related experience." The protester argues that this provision means that the site manager must have either: (1) a bachelor's degree and a minimum of 3 years related experience in communications systems and business administration, or (2) 5 years related experience. Because SIS proposed to provide a site manager with 15 years of related professional experience, SIS contends that it satisfied the requirement, and that the agency improperly downgraded its staffing proposal because the site manager did not have a bachelor's degree.

The agency, however, reads the requirements of the RFP differently. Under the agency's reading of the specification, the site manager was required to have a bachelor's degree plus a minimum number of years of experience—either 3 years of experience in communications systems and business administration, or 5 years of related experience. Because SIS proposed a site manager who did not have a bachelor's degree, the agency argues that it was proper to downgrade the protester's staffing proposal.

While we think the agency's interpretation of this request is more persuasive than the protester's, to the extent that SIS disagrees with the agency's interpretation of the educational requirements required by the solicitation, we view the solicitation as patently ambiguous. See Pitney Bowes, Inc., B-294868; B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5. Where a solicitation contains a patent ambiguity, an offeror has an affirmative obligation to seek clarification prior to the first due date for responding to the solicitation following introduction of the ambiguity into the solicitation. 4 C.F.R. § 21.2(a)(1) (2008); see Dix Corp., B-293964, July 13, 2004, 2004 CPD ¶ 143 at 3. Where a patent ambiguity is not challenged prior to such submissions, we will dismiss as untimely any subsequent protest assertion that is based on an alternative interpretation. Kellogg Brown & Root, Inc., B-291769, B-291769.2, Mar. 24, 2003, 2003 CPD ¶ 96 at 8; Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10. Our rule that protests of patent ambiguities must be filed prior to responsive submissions is intended to facilitate clarification of legitimate questions prior to preparation of submissions. Pitney Bowes, Inc., *supra*, at 5. Since this solicitation requirement could be read two ways—and since the ambiguity was apparent from the face of the solicitation—SIS may not now assert that the only permissible interpretation of this requirement is its own. We therefore think the agency reasonably downgraded SIS's proposal of a site manager who lacks a bachelor's degree.

Past Performance and Relevant Experience

With respect to the evaluation of the past performance and relevant experience factor, SIS maintains that it was improper for the agency to downgrade its proposal in this area because its past performance included only inbound calling centers, rather than centers that also provided outbound follow-up calls. The protester argues that the RFP does not indicate that the agency would distinguish between the two types of calling centers, and therefore it was improper for the agency to differentiate between the two. Protester's Comments at 7.

An agency is required to consider the similarity or relevance of an offeror's past performance information as part of its evaluation of past performance. See FAR § 15.305(a)(2) (the relevance of past performance information shall be considered); DRS C3 Syst., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 27; see also United Paradyne Corp., B-297758, Mar. 10, 2006, 2006 CPD ¶ 47 at 6. As noted above, the agency's market research indicated that there are two different kinds of call centers: those that only take information from callers on incoming calls, and those that handle both incoming and outbound calls.

The Statement of Work (SOW) contained in the RFP here explained that the contractor for the Job Corps call center would be required to provide more than just "intake" services. CO Statement at 5. The SOW specified that, in addition to responding to inbound telephone inquiries, certain outbound calling services would be required. These include performing outbound callbacks to: follow up with callers whose inquiries were not answered during the initial call; verify problem resolution; discuss with Job Corps partners issues that could not be resolved during initial contact with the customer; perform customer surveys and measure customer satisfaction; and return calls from customers using TDD/TTY [Telecommunications Device for the Deaf/Teletypewriter] devices. AR, Tab 2, at C-8.

Because SIS's prior experience involved only the first type of calling center, the agency concluded that SIS's past performance references were less relevant than references for other offerors with the broader experience operating call centers that perform both inbound and outbound calling services. While we recognize that the agency's evaluation in this regard was somewhat harsh, since there is no evidence that this approach was applied inconsistently, and the evaluation reflects a reasonable business judgment by DOL, we think the agency's evaluation was unobjectionable.

The protest is denied.

Gary L. Kepplinger
General Counsel