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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: Akal Security, Inc.

File: B-401469; B-401469.2; B-401469.3

Date: September 10, 2009

Terrence M. O'Connor, Esq., Seth C. Berenzweig, Esq., and Stephanie D. Wilson, Esq., Albo & Oblon, LLP, for the protester.

Garry S. Grossman, Esq., Richard D. Lieberman, Esq., and Gabriel D. Soll, Esq., McCarthy, Sweeney & Harkaway, PC, for Asset Protection & Security Services, LP, an intervenor.

Douglas Becker, Esq., Department of Homeland Security, Immigration and Customs Enforcement, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest objecting to agency assignment of rating of acceptable to proposal containing multiple strengths is denied where assignment of such a rating was consistent with rating definitions set forth in solicitation.

2. Agency was not obligated to reopen discussions to give offeror the opportunity to remedy a defect that first appeared in its revised proposal.

DECISION

Akal Security, Inc. of Espanola, New Mexico protests the award of a contract to Asset Protection & Security, LP of Corpus Christi, Texas under request for proposals (RFP) No. HSCEDM-09-R-00001, issued by the Department of Homeland Security, Immigration and Customs Enforcement (ICE) for the operation of a service processing center in Florence, Arizona.¹ The protester challenges the evaluation of its proposal and argues that the agency failed to conduct meaningful discussions with it.

¹ A service processing center is a facility where illegal aliens and aliens subject to final order of removal from the United States are detained.

We deny the protest.

BACKGROUND

The RFP, which was issued on February 2, 2009, sought a contractor to provide detention, transportation, and food services for the Florence Service Processing Center. The solicitation contemplated the award of an indefinite-delivery/indefinite-quantity contract for a base period of one year and four 1-year options to the offeror whose combination of technical and management capability, past performance, and price represented the best value to the government. In the determination of best value, technical/management capability was to be of greater importance than past performance, and those two factors, when combined, were to be of greater importance than price.

The solicitation provided for consideration of five equally weighted subfactors under the technical and management capability factor: approach to quality control and assurance; transition plan; key personnel; management plan; and transportation plan. The following rating scale was to be used in evaluating proposals under the factor:

Rating	Definition
Outstanding	The Contractor meets and significantly exceeds the requirements of the RFP. The Contractor has demonstrated that it is highly proficient, knowledgeable, and experienced in meeting the requirements specified.
Good	The Contractor meets or exceeds the requirements of the RFP. The Contractor has demonstrated that it is proficient, knowledgeable, and experienced in meeting the requirements specified.
Acceptable	The Contractor meets and sometimes exceeds the requirements of the RFP. The Contractor has demonstrated sufficient knowledge or experience in meeting the requirements specified.
Marginal	The Contractor has met the minimum requirements of the RFP with some errors/deficiencies but not “many” as defined by the Unacceptable rating.
Unacceptable	The proposal has many deficiencies and/or gross omissions. The Offeror does not meet many of the requirements of the RFP. The Contractor has little or no working knowledge of how to meet the requirements specified. (When applying this adjective to a proposal as a whole, the proposal must be so unacceptable in one or more areas that it would have to be significantly revised in order to attempt to make it other than unacceptable.)

RFP at 89. Under the past performance factor, proposals were to be rated as neutral, outstanding, good, acceptable, or unacceptable.

The agency received three proposals prior to the March 16 closing time. The evaluators eliminated one proposal from consideration and established a competitive range consisting of the remaining two proposals, from Akal and Asset; the agency then conducted discussions with the two offerors. At the conclusion of discussions, the evaluators assigned the proposals the following ratings under the technical and management capability factor:

Factor/Sub-factor	Asset Rating	Akal Rating
Quality Control and Assurance	Outstanding	Acceptable
Transition Plan	Good	Good
Key Personnel	Acceptable	Acceptable
Management Plan	Outstanding	Acceptable
Transportation Plan	Acceptable	Acceptable
Overall Technical	Good	Acceptable

The evaluation team assigned both offerors ratings of good for past performance. Akal's final evaluated price was \$189,636,430.70, and Asset's was \$184,297,785. The evaluation panel determined that Asset's proposal represented the best value to the government and recommended to the source selection authority (SSA) that Asset receive the award. The SSA concurred with the adjectival ratings assigned by the evaluators and their best value determination. On May 29, the agency awarded a contract to Asset. After receiving a debriefing, Akal protested to our Office.

DISCUSSION

Akal argues that given the number of strengths in its proposal, it was unreasonable for the evaluators to assign it an overall technical rating of merely acceptable. In this connection, the protester notes that the agency's debriefing letter identified 13 strengths in Akal's proposal; the protester asserts that the proposal contained additional strengths as well.

In reviewing a protest of an agency's evaluation of proposals, we will not reevaluate proposals; rather, we 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. Installation Mgmt. Co., B-400613, B-400613.2, Dec. 31, 2008, 2009 CPD ¶ 47 at 2. The protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. The OMO Group, Inc., B-294328, Oct. 19, 2004, 2004 CPD ¶ 212 at 5.

As previously noted, the RFP here stated that a rating of outstanding would be given to a proposal that meets and significantly exceeds the requirements of the RFP; a rating of good to one that meets or exceeds the requirements; and a rating of acceptable to one that meets and sometimes exceeds the requirements. It is clear from the evaluation record that the evaluators assigned a rating of outstanding only

where they had identified a significant strength under a subfactor; in our view, this is a reasonable application of the solicitation definition of the rating. Since the evaluators did not identify a significant strength in the protester's proposal under any of the subfactors, it was reasonable for them not to assign it a rating of outstanding for any of the subfactors or for the technical factor overall.

Regarding the protester's argument that its proposal should have received a rating of good for the technical factor, we note that the solicitation definitions for ratings of good and acceptable are overlapping—that is, it would have been consistent with the definitions set forth in the solicitation for the agency to assign a proposal with some strengths a rating of either good or acceptable. It appears from the record that the agency differentiated between the two ratings by assigning a rating of acceptable where the evaluators identified only a few strengths under a subfactor and a rating of good where they identified multiple strengths. For example, the evaluators identified five strengths in both Akal's and Asset's proposals under the transition plan subfactor, and accordingly assigned both proposals ratings of good for the subfactor; in contrast, under the transportation plan subfactor, the evaluators identified only one strength in Akal's proposal and only two strengths in Asset's and thus assigned both proposals ratings of acceptable under that subfactor. We think that this approach was reasonable. Moreover, the protester has failed to assert—and the record is devoid of evidence suggesting—a lack of even-handedness on the part of the evaluators in their assignment of ratings; that is, there is no evidence that the evaluators assigned Akal's proposal a lower rating than Asset's under any subfactor for which they identified an equivalent number of strengths in the two proposals. Given that the evaluators reasonably assigned Akal's proposal ratings of acceptable under four of the five equally-weighted technical evaluation subfactors, it was reasonable for them to assign its proposal an overall technical rating of acceptable.

Akal also argues that the evaluators failed to identify as strengths several areas in which its proposal surpassed the RFP's requirements; that the agency misled Akal by advising it during discussions that the firm was offering warehouse services that exceeded the agency's minimum requirements, and then, when it responded by eliminating a warehouse worker from its kitchen staffing plan, finding its elimination of the position to be a weakness; and that the source selection authority did not adequately document his award determination. The agency furnished a detailed response to all these allegations and Akal did not take issue with or seek to rebut the agency response. Accordingly, we consider it to have abandoned these arguments.² Tiger Truck LLC, B-310759, B-310759.2, Feb. 7, 2008, 2008 CPD ¶ 44 at 3.

² In any event, the record shows these arguments are without merit. For example, the agency report demonstrated through reference to the evaluation record that the evaluators had in fact recognized nearly all of the areas identified by the protester as strengths; the report also furnished a reasonable explanation as to why the evaluators did not consider the remaining areas as rising to the level of strengths.

In its second supplemental protest, Akal for the first time raised the argument that the agency should have conducted discussions with it regarding its general and administrative rates given that the contracting officer questioned the firm's understanding as to how such rates were to be calculated. This argument is untimely since it is based on information that was made available to the protester as part of the initial agency report filed on July 10, see Agency Report for B-401469, Exh. 16 (Source Selection Evaluation Report to the Source Selection Authority) at 29, but was not raised until August 17; accordingly, we will not consider it.³ Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2009) (to be timely, protests based on other than solicitation improprieties must be filed not later than 10 days after the basis of protest is, or should have been, known).

The protest is denied.

Daniel I. Gordon
Acting General Counsel

³ In its second supplemental protest, Akal also argued that the agency should have given it the opportunity to eliminate the new weakness that it introduced into its proposal in response to discussions; as noted above, the weakness stemmed from the elimination of a warehouse worker position from Akal's kitchen staffing plan. This argument is without merit; an agency is not obligated to reopen negotiations to give an offeror the opportunity to remedy a defect that first appears in a revised proposal. American Sys. Corp., B-292755, B-292755.2, Dec. 3, 2003, 2003 CPD ¶ 225 at 8.