



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: FCi Federal, Inc.

File: B-413569.2; B-413569.3

Date: March 9, 2017

Daniel J. Donohue, Esq., Polsinelli PC, for the protester.

David S. Cohen, Esq., John J. O'Brien, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for the intervenor.

Beth Sturgess, Esq., Mark A. Allen, Esq., John Cornell, Esq., Eric Crane, Esq., Joshua Kranzberg, Esq., United States Citizenship and Immigration Services, for the agency. Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated protester's proposal is denied where proposed deputy program manager did not meet solicitation's education requirements.
2. Agency's communications with awardee concerning matters of responsibility do not constitute discussions where awardee does not change its price or modify its technical proposal.

DECISION

FCi Federal, Inc., of Ashburn, Virginia, protests the award of a contract to PAE Professional Services, Inc. (PAE), of Falls Church, Virginia, under request for proposals (RFP) HSSCCG-16-R-00010, issued by the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services, for field office support services. FCi asserts that the agency unreasonably evaluated its proposal and held unequal discussions.

We deny the protest.

BACKGROUND

DHS issued the solicitation for a contractor to provide support services to 30 field offices and 9 asylum offices. RFP at A-2. The solicitation provided for award on the basis of the best value to the government considering the following factors (in descending order of importance): management capability (with subfactors for management approach and

corporate experience); price; past performance; small business utilization; and participation in the DHS mentor-protégé program. Id. at V-1. The solicitation advised that the factor ratings would be based on a roll-up of the subfactor ratings and their relative order of importance. Id. at V-2. The evaluation factors and subfactors were to be rated as outstanding, good, acceptable or unacceptable; any subfactor found to be unacceptable would result in an unacceptable rating for the entire factor. Id. Further, the solicitation provided that a proposal with one or more deficiencies would be rated unacceptable.¹ Id. at V-5.

With respect to the management approach subfactor, offerors were to “describe their process for hiring initial staff, their plan to obtain key personnel (and Statements of Qualifications for key personnel that show how proposed key personnel meet the Government’s requirement)” among other things. RFP at IV-4. Under this subfactor, the agency would evaluate offerors on whether they proposed an effective plan to hire staff and “obtain key personnel (includes Statements of Qualifications within their proposal for key personnel). . . .” Id. at V-2. The solicitation set forth two key personnel--the program manager and deputy program manager. Id. at A-24. With respect to the deputy program manager, the solicitation provided the following: “Minimum Education: Minimum of Bachelor’s degree in one of the following disciplines: Business Administration/Management, Public Administration/Management[,] Accounting, Project Planning/Project Management or related fields. A Project Management Professional certification is desired.” Id. at A-25.

Six offerors submitted proposals in response to the solicitation. The agency evaluated FCi and PAE as follows:

	FCi	PAE
Management Capability	Good	Good
Management Approach	Good	Good
Corporate Experience	Good	Acceptable
Past Performance	Low Risk	Neutral
Small Business Utilization	Acceptable	Acceptable
Participation in DHS Mentor-Protégé	Acceptable	Acceptable

Protest, Exh. 2, Award Notification, Aug. 5, 2016, at 2. On August 5, 2016, the agency issued an award to PAE. FCi subsequently filed a protest, which was later dismissed as academic because the agency decided to reevaluate proposals and issue a new award decision.

¹ A deficiency is a material failure of a proposal to meet a solicitation requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. RFP at V-6.

Following the reevaluation, the proposals of FCi and PAE were rated as follows:

	FCi	PAE
Management Capability	Unacceptable	Good
Management Approach	Unacceptable	Good
Corporate Experience	Good	Acceptable
Past Performance	Low Risk	Neutral
Small Business Utilization	Acceptable	Acceptable
Participation in DHS Mentor-Protégé	Acceptable	Acceptable

Protest, Exh. 4, Award Notification, Dec. 19, 2016, at 2. FCi was rated unacceptable under the management approach subfactor, and as a result under the management capability factor, because the agency determined that the proposal contained two deficiencies--the proposed program manager was no longer available, and the deputy program manager failed to meet the solicitation's education requirements. Agency Dismissal Request at 2. Specifically, the agency determined that the deputy program manager proposed by FCi did not meet the solicitation's education requirement because his bachelor's degree was in psychology and sociology, which was not one of the areas specified by the solicitation, or in a field related to any of the identified areas.

PAE was again selected for award and FCi submitted this protest.

DISCUSSION

FCi has incorporated the issues raised in its initial protest challenging the evaluation of its and PAE's proposal, and has also raised additional challenges to the evaluations. Specifically, FCi complains that the agency's evaluation of its proposal was unreasonable because FCi should have received an outstanding, not an unacceptable rating, under the management approach subfactor and management capability factor. FCi also challenges the agency's evaluation of PAE's proposal as acceptable under the corporate experience subfactor and argues that the awardee's proposal does not meet the Service Contract Act wage requirements. Further, FCi argues that the agency held discussions with PAE but not FCi. We have reviewed the allegations and find they do not provide a basis to sustain the protest.

Management Capability Evaluation

FCi argues that it should have received an outstanding rating under the management approach subfactor and management capability factor because its program manager and deputy program manager met the requirements of the solicitation. During the initial evaluation (before the corrective action) the agency rated FCi acceptable under the management approach factor, even though it proposed the same deputy program manager. FCi argues that there is no basis for the change in rating.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2.

Here, the agency explains that offerors were to provide statements of qualifications for their key personnel showing they meet the government's requirements. One requirement was that the deputy program manager have a minimum of a bachelor's degree in "Business Administration/Management, Public Administration/Management[,] Accounting, Project Planning/Project Management or related fields. A Project Management Professional certification is desired." RFP at A-25. FCi's proposed deputy program manager has a bachelor's degree in psychology and sociology. See FCi Proposal at 30. During the reevaluation, the agency concluded that the proposed deputy program manager's degree was not in the solicitation's required discipline, or in a related field, because the required degrees demonstrate educational competence in the areas of business, project planning, and/or management, and in comparison, psychology focuses on the study of individuals and sociology focuses on the study of society. Protest, Exh. 4, Award Notification, Dec. 19, 2016, at 2-3.

When an agency takes corrective action it is not bound by its initial evaluation. Sabre Systems, Inc., B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3. Notably, agencies often take corrective action with the purpose of correcting evaluation errors. Here, while FCi disagrees with the agency's position that sociology and psychology are not fields related to business or public administration, accounting, or project management, the protester's disagreement does not demonstrate that the agency's decision, and reevaluation, is unreasonable.

The protester also asserts that the proposal did not contain a deficiency such that it should be rated unacceptable. Specifically, FCi contends that even if the deputy program manager did not meet the solicitation's education requirement, that is not a material failure to meet a government requirement that increased the risk of unsuccessful contract performance to an unacceptable level. We disagree with FCi to the extent the protester argues that the failure of the deputy program manager to meet the education requirement was not a deficiency. Where a solicitation states that the qualifications of key personnel will be evaluated, and a proposal fails to demonstrate that key personnel meet the solicitation's requirements, the proposal may reasonably be evaluated as unacceptable. Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 10-11; Computer World Services Corp., B-410567.2, B-410567.3, May 29, 2015, 2015 CPD ¶ 172 at 5. Since the deputy program manager does not have the required degree, the agency

reasonably assigned the proposal a deficiency, and rated it unacceptable under management approach.²

Unequal Discussions

FCi has also alleged that the agency held discussions with PAE, but failed to hold discussions with FCi. FCi contends that the agency held discussions to allow PAE to substitute its proposed deputy program manager. FCi bases its argument on a job announcement PAE had posted for a deputy program manager. FCi also contends that the agency held discussions that allowed the awardee to modify its proposal and eliminate any involvement of another PAE entity.

In this regard, the agency acknowledges that it communicated with PAE on August 4 and 5, regarding responsibility matters. Agency Response to Questions, Feb. 23, 2017. Specifically, the agency explains that it discovered negative information about another PAE entity. Although this entity was not mentioned in PAE's proposal, the agency requested that PAE confirm that this entity would not be involved in the effort. Id. The agency also sought further details on the negative information to determine its effect, if any, on PAE's responsibility. Id. PAE did not revise its proposal. Id.

Discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Federal Acquisition Regulation (FAR) § 15.306(d). When an agency holds discussions with one offeror, it must hold discussions with all offerors that are included in the competitive range. SRA Int'l, Inc., B-410973, B-410973.2, Apr. 8, 2015, 2016 CPD ¶ 32. An agency's exchange with an offeror solely regarding matters of responsibility does not constitute discussions provided that the offeror does not change its price or materially modify its proposal. Cargo Transport Systems Co., B-411646.6, B-411646.7, Oct. 17, 2016, 2016 CPD ¶ 294 at 9; Engility Corp., B-413202, B-413202.2, Sept. 2, 2016, 2016 CPD ¶ 251 at 8.

Here, the protester does not dispute that the agency's communications with PAE concerned the firm's responsibility. The protester asserts, however, that the agency received and relied upon information it received in August 2016, to the effect that a PAE entity with negative responsibility information would not be involved in the contract.

² FCi also argues that the agency unreasonably determined that its program manager would not be available for the project. To the extent FCi raises additional challenges to the evaluation of its own proposal, our Office will not sustain a protest absent a showing of competitive prejudice, *i.e.*, where the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving the award. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 11. Here, even if FCi is correct in its additional challenges to the agency's evaluation of its proposal, it would not be prejudiced since its proposal would in any case be unacceptable.

Supplemental Protest at 5. Thus, according to protester, “PAE’s August 2016 submission thus appears to have modified its proposal.” *Id.* As stated above, however, the entity in question was not mentioned in PAE’s proposal. The fact that PAE confirmed that the entity would not be involved in the effort concerned responsibility, and did not constitute a proposal modification.

We also note that the deputy program manager proposed by PAE has submitted a sworn statement indicating that he has been at all times available and willing to perform in that role. Declaration of Deputy Program Manager, January 16, 2017. Since, PAE did not modify its proposal, and/or information the agency received concerned PAE’s responsibility, the agency did not hold discussions with PAE. Consequently, we find no basis here to sustain the protest.

Evaluation of Awardee’s Proposal

Finally, FCi raises a number of additional challenges to the evaluation of PAE’s proposal. Under our Bid Protest Regulations, a protester must be an interested party to pursue a protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. *Id.* § 21.0(8). Here, regarding FCi’s challenge to the evaluation of PAE’s proposal, the agency reports that there is another offeror that submitted a proposal that was rated acceptable and FCi did not challenge that offeror’s proposal. Agency Dismissal Request at 1-2. Since we have found that FCi’s proposal was properly evaluated as unacceptable, and since there is another acceptable offeror in the competition, FCi is not an interested party to challenge the evaluation of PAE’s proposal.

The protest is denied.

Susan A. Poling
General Counsel