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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: Honeywell Technology Solutions, Inc.

File: B-400771.6

Date: November 23, 2009

David A. Churchill, Esq., Kevin C. Dwyer, Esq., and Anna M. Baldwin, Esq., Jenner & Block LLP, for the protester.

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Alexander T. Bakos, Esq., Laura M. Giza, Esq., John H. Eckhardt, Esq., and Pamela J. Werner, Esq., National Aeronautics and Space Administration, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency decision to limit corrective action to the area of past performance is unobjectionable where it is adequate to remedy the procurement impropriety at issue.

DECISION

Honeywell Technology Solutions, Inc., of Columbia, Maryland, protests the actions of the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center (GSFC), in its implementation of corrective action in response to Honeywell's protest of NASA's award of a contract to ITT Corporation – Advanced Engineering & Sciences (ITT), of Herndon, Virginia, under request for proposals (RFP) No. NNG08218142R, for space communications network services (SCNS). Honeywell argues that NASA's corrective action is improper by limiting the scope of offerors' proposal revisions to past performance information.

We deny the protest.

BACKGROUND

The RFP, issued on January 16, 2008, sought proposals to provide the personnel, materials, and facilities necessary to perform all SCNS program requirements ([see Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49](#)

for additional details). The RFP contemplated the award of a partial cost-plus-award-fee contract/partial indefinite-delivery/indefinite-quantity contract for a period of 5 years together with two 1-year options. The RFP established three evaluation factors in descending order of importance: mission suitability; cost; and past performance. The noncost factors, when combined, were significantly more important than cost. Award was to be made to the offeror whose proposal was determined to represent the “best value” to the government.

Three offerors, including incumbent Honeywell and ITT, submitted proposals by the February 15 closing date. A NASA selection evaluation board (SEB) evaluated offerors’ proposals. The contracting officer decided that discussions with offerors were necessary, and established a competitive range consisting of the Honeywell and ITT proposals. The agency conducted discussions, followed by the offerors’ submission of final proposal revisions (FPR) by August 25. NASA’s final evaluation ratings of the Honeywell and ITT proposals were as follows:

Factor	Honeywell	ITT
Mission Suitability	Very Good	Very Good
Past Performance	Very Good	Excellent
Total Evaluated Cost	\$(DELETED)	\$(DELETED)

Agency Report (AR), Tab 80, Final SEB Report, at 23640, 23752.

On October 6, the NASA source selection authority (SSA) determined that ITT’s proposal was technically superior to that of Honeywell under both the mission suitability and past performance factors. The SSA found, among other things, that while both offerors possessed highly relevant past performance, ITT had a quality advantage relating to systems engineering and developmental tasks. The SSA concluded that ITT’s higher technically-rated, higher-cost proposal represented the best value to the government.

Honeywell filed its initial protest on October 20, challenging various aspects of the evaluation of offerors’ proposals, the conduct of discussions, and the source selection. On January 27, 2009, we sustained the protest in part, finding that NASA’s evaluation of ITT’s past performance was not reasonable or in accordance with the solicitation: the record failed to reflect that the agency had adequately considered the substantially smaller size of one of ITT’s most important references (i.e., its mission service program (MSP) contract) when determining the relevance of ITT’s past performance.¹ In light of this deficiency in the agency’s evaluation of ITT’s past performance, it was not possible to determine what ITT’s past performance rating

¹ We dismissed or denied all other bases of protest, including Honeywell’s challenges to the agency’s evaluation of offerors’ technical and cost proposals.

properly should have been and, therefore, we concluded that the agency's action was prejudicial to Honeywell. We recommended that NASA reevaluate ITT's past performance, and then rely on that revised evaluation in making a new source selection determination.² Honeywell Tech. Solutions, Inc., *supra*, at 19-25.

On April 7, NASA completed its reevaluation of ITT's past performance and again found that ITT's proposal represented the best value to the government. Honeywell filed a second protest on April 24, challenging the agency's reevaluation of ITT's past performance. On June 25, following a hearing held by our Office, we conducted an "outcome prediction" alternative dispute resolution (ADR) conference and advised the parties that NASA's reevaluation of ITT's past performance was not reasonable or consistent with the stated evaluation criteria because ITT's MSP contract--being only 4% the size of the SCNS contract effort--was not relevant as defined by the RFP (*i.e.*, similar in size, content and complexity) and, under the evaluation scheme, should have been afforded little if any weight in the agency's evaluation of ITT's past performance. Hearing Transcript (HR), June 25, 2009, at 423-31.

On July 2, NASA announced its intent to take corrective action in the form of conducting discussions with offerors regarding past performance, permitting offerors to submit FPRs limited to past performance information, reevaluating the past performance of both offerors, and making a new source selection decision.³ NASA Email to GAO, July 2, 2009. Based on this proposed corrective action, we dismissed the second protest as academic. Honeywell Tech. Solutions, Inc., B-400771.3, B-400771.4, July 8, 2009.

Honeywell then filed an agency-level protest with the NASA contracting officer on July 13. Honeywell asserted that NASA's planned corrective action was insufficient because it ignored the fact that offerors' proposals had become outdated in all regards; Honeywell also argued that limiting proposal revisions to only past performance was unreasonable because past performance was "inextricably linked"

² We also recommended that if, after reevaluation, Honeywell's proposal was determined to represent the best value to the government, the agency should terminate ITT's contract and make award to Honeywell.

³ The agency subsequently clarified the scope of its corrective action. First, in contrast to a draft amendment provided offerors, NASA has decided not to amend the RFP as to the past performance evaluation scheme. NASA Letter to GAO, Sept. 16, 2009, at 1. The agency has also indicated that the need for exchanges with offerors and/or FPRs has not yet been determined, and will depend on the nature of the updated past performance information received from offerors (*e.g.*, adverse past performance information to which the offeror has not previously had an opportunity to respond). AR, Sept. 23, 2009, at 14-16.

to other elements of the offerors' proposals. The contracting officer denied Honeywell's agency-level protest on August 11,⁴ and this protest followed.

DISCUSSION

Contracting officers in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 8; Computer Assocs. Int'l, B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 5. An agency's discretion when taking corrective action also extends to a decision on the scope of proposal revisions, and there are circumstances where an agency may reasonably decide to limit the revisions offerors may make to their proposals. See, e.g., Computer Assocs. Int'l, *supra*; Rel-Tek Sys. & Design, Inc.—Modification of Remedy, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3. In instances where the corrective action does not also include amending the solicitation, we will not question an agency's decision to restrict proposal revisions when taking corrective action so long as it is reasonable in nature and remedies the established or suspected procurement impropriety. See Consolidated Eng'g Servs., Inc., B-293864.2, Oct. 25, 2004, 2004 CPD ¶ 214 at 3-4; Computer Assocs. Int'l, *supra*.

As a preliminary matter, the parties agree that NASA's corrective action here does not include amending either the solicitation's substantive requirements or evaluation scheme. Additionally, Honeywell does not dispute that NASA's corrective action remedies the established or suspected procurement impropriety (*i.e.*, the agency's evaluation of ITT's past performance). Rather, the crux of Honeywell's objections is that the agency's corrective action does not go far enough, insofar as offerors should be permitted to submit unlimited proposal revisions.

The agency's decision to limit the scope of its corrective action was reasonable. As noted above, our January 27 decision found that NASA's evaluation of ITT's past performance was improper, but that Honeywell's remaining challenges to the evaluation of offerors' proposals were without merit: in light thereof, our recommendation was limited to remedying the identified problem regarding the past performance evaluation. Further, after the June 25 outcome prediction ADR

⁴ The contracting officer did not dispute Honeywell's contention that offerors' cost and technical proposals were as out of date as their past performance proposals; rather, the contracting officer found "it is just as likely that the same changed circumstances [Honeywell] cites will have similar impact on both offerors, and will not substantively impact the competitive process." AR, Tab 100, NASA Final Decision on Honeywell Agency-Level Protest, Aug. 11, 2009, at 3. The contracting officer's decision did not state why the "same changed circumstances/similar impact" rationale existed only with regard to offerors' cost and technical proposals, and not also with regard to their past performance proposals.

conference, NASA took corrective action to remedy the problem identified regarding the past performance evaluation and, at the same time, decided to obtain updated information from both offerors in that area. In our view, NASA's decision to update the past performance information from each offeror was a reasonable way to remedy the identified procurement impropriety while not affecting other portions of offerors' proposals and the evaluation thereof. This approach has the added benefit of reducing further cost and delay in the procurement. See Computer Assocs. Int'l, Inc., supra; Serv-Air, Inc., B-258243.4, Mar. 3, 1995, 95-1 CPD ¶ 125 at 2-3. We therefore conclude that the agency acted within its discretion in limiting the revisions offerors may make to their proposals.

Honeywell argues that offerors' technical and cost proposals are as outdated as the past performance proposals which NASA believes require updating as part of its corrective action. Specifically, the protester alleges that the agency's evaluation of offerors' cost proposals no longer takes into account the specific years in which contract performance would actually occur. Honeywell also contends that offerors' technical proposals no longer reflect the actual technical approaches (e.g., key personnel, new technologies, improved processes) that would be employed during contract performance. Protest, Aug. 21, 2009, at 6-13. The agency states that the terms of the RFP did not contain specified start and end dates, and instead defined contract years based on the date of contract award; NASA also asserts that the direct and indirect labor rates proposed by both offerors can be used for determining and evaluating the cost of performance notwithstanding the delays in contract award. AR, Nov. 10, 2009, at 1.

We find Honeywell's argument to be without merit. As a preliminary matter, the different start date and calendar years in which SCNS performance will occur did not change the statement of work, the evaluation scheme, or the length of time for which the contractor would be obligated. See Consolidated Eng'g Servs., Inc., supra. More importantly, Honeywell has failed to establish that NASA's decision permitting offerors to update their past performance information is expected to have a material impact on their cost or technical proposals. See ST Aerospace Engines Pte. Ltd., B-275725.3, Oct. 17, 1997, 97-2 CPD ¶ 106 at 4. The issue is not whether Honeywell's technical and cost proposals have also been affected by the passage of time, but whether permitting the offeror to update its past performance information results in a material impact on other aspects of the offeror's proposal. While, as the protester suggests, NASA could have chosen to permit offerors to also revise their technical and cost proposals (to be followed by a complete reevaluation), the contracting agency's decision not to undertake such action here represents a reasonable exercise of its discretion. See SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 7.

We also find unpersuasive Honeywell's argument that past performance revisions are "inextricably linked" to offerors' proposed technical approaches. Honeywell contends that, as evidenced by a recent award fee determination under its

incumbent contract, it is aware the agency intends to downgrade its past performance based on the loss of incumbent personnel.⁵ Honeywell argues that it will be faulted (presumably under the past performance factor) for its loss of incumbent personnel without having an opportunity—in the form of an updated technical proposal—to explain its solution to this issue. Protest, Aug. 21, 2009, at 15-16; Comments, Oct. 5, 2009, at 3. First, Honeywell fails to establish that the loss of incumbent personnel on its incumbent contract will affect its past performance evaluation. Honeywell also broadly states that it would modify its technical proposal based on the loss of certain incumbent personnel but, despite having the award fee determination in hand, it provides no specific information to support its general assertion. More importantly, Honeywell has not shown why the opportunity to address the alleged past performance deficiency must come in the form of a revised technical proposal. In sum, the protester has not established that requiring offerors to update their past performance information will have a material impact on their technical proposals, let alone that the two aspects of the offerors’ proposal are “inextricably linked.”

Lastly, Honeywell argues that the SCNS RFP no longer accurately reflects the agency’s work requirements. Specifically, the protester asserts that NASA intends to “dilute” the amount of systems engineering work to be performed on the SCNS contract by means of the agency’s new space network ground system sustainment (SSGS) procurement. Comments, Oct. 5, 2009, at 15-16. NASA’s SSGS procurement currently consists of a draft solicitation released on August 5 for industry comment. Contracting Officer’s Statement, Oct. 13, 2009, at 3. As a result, we find Honeywell’s assertion here to be entirely speculative in nature and an insufficient basis for challenging the reasonableness of the agency’s corrective action.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ Honeywell contends that the loss of employees is in large part due to the delays and uncertainties surrounding NASA’s SCNS contract award decision. Protest, Aug. 21, 2009, at 15.