



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Applied Business Management Solutions Incorporated, LLC

File: B-405724

Date: December 15, 2011

Antonio R. Franco, Esq., and Kathryn V. Flood, Esq., PilieroMazza PLLC,
for the protester.

Keith L. Baker, Esq., and Bryan R. King, Esq., Barton Baker Thomas & Tolle, LLP,
for TK Services, LLC, the intervenor.

Tina Marie Pixler, Esq., Department of the Army, for the agency.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly accepted awardee's plan to hire incumbent personnel based on claim that personnel will be unavailable is denied where there is no significant countervailing evidence reasonably known to agency that should or did create doubt as to accuracy of awardee's representations regarding hiring plan.
 2. Allegation that agency failed to conduct price reasonableness analysis based on claim that awardee's price was unrealistically low fails to state valid basis for protest where solicitation provided for award of fixed-price contract and did not provide for price realism analysis.
 3. Protest that agency misevaluated protester's proposal is denied where record reasonably supports evaluation and protester's arguments reflect mere disagreement with agency judgments.
-

DECISION

Applied Business Management Solutions Incorporated, LLC, of Largo, Maryland, protests the award of a contract by the Department of the Army to TK Services, LLC, of Alexandria, Virginia, under request for proposals (RFP) No. W91ZLK-11-R-0004 for logistics and facilities services at the Edgewood Chemical and Biological Center (Edgewood Center) in Harford County, Maryland. Applied asserts that the agency's evaluation of both Applied's proposal and TK's proposal was unreasonable in various respects.

We deny the protest.

BACKGROUND

The solicitation, which was issued on May 13, 2011 as a section 8(a) small business set-aside, provided for the award of a fixed-price contract with a 1-year base period and four 1-year option periods. RFP at 1-27, 98. Award was to be made to the offeror whose proposal represented the “best value” to the government based on consideration of the following four evaluation factors: technical approach; management plan; past performance; and price. Id. at 102. The management plan factor included two subfactors: quality control program; and transition plan. Id. at 103. The technical approach and management plan factors were stated to be of equal value, and more important than the past performance factor. Id. at 102. The non-price factors were stated to be collectively more important than price. Id.

Under the contemplated contract, the successful offeror would provide all personnel and office supplies necessary to perform logistics and facilities services at the Edgewood Center as described in a performance work statement (PWS) that was incorporated into the solicitation. PWS § 1. The contractor’s duties under the PWS were to include, among other things, opening and locking Edgewood Center buildings at specified times. Id. § 2.1.3. In particular, the PWS specified that “[b]uildings shall be opened one half hour prior to core duty hours (5:30AM) and locked one half hour after core duty hours (6:30PM).” Id.

With respect to an offeror’s technical approach, the solicitation instructed that proposals must “identify potential risks with the proposed approach as well as the means to mitigate them.” RFP at 95. With respect to an offeror’s management plan, the solicitation stated that the agency would evaluate whether the plan “provides a manpower matrix with proposed skill sets with the minimum qualifications required . . . to successfully accomplish the PWS tasks.” Id. at 103. The solicitation also stated that the agency would evaluate whether the plan “provides a clear and concise approach for recruiting, hiring, [and] retaining personnel to include maintaining adequate workforce and filling vacancies.” Id.

The solicitation designated four positions as key personnel positions, including the program manager and lead facility manager. PWS § 9.6. Minimum qualifications were specified for each key personnel position. The minimum qualifications for the program manager included “a Bachelor’s degree in business or human resources or ten (10) years of documented experience in managing multiple-site, multidisciplinary (facility and logistics) service support contracts.” Id. § 9.2.1. The solicitation instructed offerors to submit résumés for proposed key personnel. RFP at 95.

Applied is the incumbent Edgewood Center logistics and facilities services contractor. Protest at 6. To foster efficient performance of the follow-on contract being solicited here, the solicitation included a clause designed to promote the

successful offeror's use of qualified incumbent personnel. RFP at 76. In relevant part, the clause provided as follows:

[T]he contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which the employees are qualified.

Id.

The agency received two proposals in response to the solicitation, one from Applied and one from TK. Contracting Officer's Statement at 2. A source selection evaluation board (SSEB) convened and evaluated both proposals. Id.

For TK's proposal, the SSEB identified ten strengths and no weaknesses. See Agency Report (AR) Tab I, Source Selection Decision (SSD), at 2-3. As relevant to this protest, TK's proposed staffing approach was based on [DELETED]. AR, Tab G, TK Proposal, Vol. II, Management Plan, at 3. None of the key personnel proposed by TK, however, were incumbent personnel. Id., App., Key Personnel, at 1-6. Further, none of the ten strengths assigned to TK's proposal pertained to TK's proposed retention of incumbent personnel. AR, Tab I, SSD, at 2-3.

For Applied's proposal, the SSEB identified no strengths and six weaknesses. See id. at 3-4. Two of the weaknesses pertained to Applied's technical approach. Those weaknesses were: the failure to identify potential risks--and corresponding mitigation measures--connected with the approach; and noncompliance with the solicitation's requirements for the times that buildings were to be opened and locked.¹ Id. at 3; AR, Tab J, SSEB Evaluation of Applied Proposal, at 8, 17. Three of the other weaknesses assigned to Applied's proposal pertained to the management

¹ At least three sections of Applied's proposal included statements relevant to the latter weakness. First, Applied's proposal stated that Applied's facilities coordinators would "[DELETED]." AR, Tab H, Applied Proposal, Vol. I, Technical Approach, at 2. Second, Applied's proposal stated that Applied's facility monitors would [DELETED] Edgewood facilities from [DELETED] through [DELETED]. Id. at 4. Within this same section, however, the proposal stated that [DELETED] would require an additional [DELETED]. Id. Finally, Applied's proposal stated that two particular buildings would be "locked at [DELETED]" and that a third building would be "locked at [DELETED]" Id. at 6. The first and last of these three proposal statements were cited in the agency's evaluation documentation. AR, Tab J, SSEB Evaluation of Applied Proposal, at 8.

plan factor. Those weaknesses were: the failure to include a detailed manpower matrix; the failure to propose a program manager with requisite qualifications; and the failure to propose a lead facility manager with requisite qualifications. AR, Tab I, SSD, at 4; AR, Tab J, SSEB Evaluation of Applied Proposal, at 8, 9, 14, 17. The final weakness assigned to Applied’s proposal pertained to the past performance factor. AR, Tab I, SSD, at 4; AR, Tab J, SSEB Evaluation of Applied Proposal, at 10, 15, 18.

Following the evaluation, the SSEB assigned the following consensus ratings to the two proposals:

	<u>TK</u>	<u>Applied</u>
Factor 1–Technical Approach	Excellent	Acceptable
Factor 2–Management Plan	Good	Acceptable
Subfactor A–Quality Control	Good	Acceptable
Subfactor B–Transition Plan	Acceptable	Acceptable
Factor 3–Past Performance	Acceptable	Acceptable

AR, Tab I, SSD, at 5. TK’s bottom-line price was \$10,241,726.94. Id. Applied’s bottom-line price was \$11,460,366.01, approximately \$1.2 million higher than TK’s price. Id.

The source selection authority (SSA) reviewed the SSEB’s evaluation documentation. Contracting Officer’s Statement at 2. Based on this review, the SSA determined that TK’s proposal offered the best value to the government because TK’s proposal received higher non-price evaluation factor ratings and because TK offered a lower price. AR, Tab I, SSD, at 6.

On August 30, the agency awarded the contract to TK. AR, Tab A, TK Contract, at 1. Following a debriefing, Applied filed this protest with our Office.

DISCUSSION

In its protest, Applied first asserts that TK’s proposal should have received a lower rating under the management plan factor because, according to Applied, TK proposed incumbent personnel that TK knew or should have known would be unavailable to perform the contract. Protest at 6-7; Comments at 2-4. As stated above, Applied is the incumbent contractor for the requirement at issue. Protest at 6. Applied contends that the incumbent personnel will not be available to perform the protested contract for two reasons. First, Applied asserts that based on the differential between Applied’s and TK’s bottom-line prices, TK “cannot” offer the same level of employee benefits as Applied, and, therefore, the personnel will be

unwilling to agree to employment with TK.² Protest at 6. Second, Applied asserts that Applied itself intends to retain many of the personnel for work on other projects.³ Protest at 6.

As a general matter, in evaluating proposals an agency may reasonably rely as accurate on information provided by an offeror in its proposal. Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5; NCR Gov't Sys. LLC, B-297959, B-297959.2, May 12, 2006, 2006 CPD ¶ 82 at 8-9. On the other hand, an agency may not accept representations in a proposal at face value where there is significant countervailing evidence reasonably known to the agency evaluators that should or did create doubt as to whether the representations are accurate. See Alpha Marine Servs., LLC, B-292511.4, B-292511.5, Mar. 22, 2004, 2004 CPD ¶ 88 at 4; Maritime Berthing, Inc., B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89 at 9.

We see no merit to Applied's contentions. It is true, as Applied points out, that TK's proposed staffing approach involves the retention of most of the incumbent workforce.⁴ AR, Tab G, TK Proposal, Vol. II, Management Plan, at 3. However, we see no evidence in the record that the agency knew of Applied's purported intent to retain the incumbent personnel for work on other projects. Further, Applied is mistaken that TK's comparatively lower bottom-line price necessarily demonstrates that TK cannot offer employee benefits equal to those offered by Applied. To the contrary, TK's lower price may reflect a different technical approach, lower overhead costs, or a lower profit margin, rather than a lesser benefits plan. See Data Mgmt. Servs. JV, *supra*, at 16; Servizi Aeroportuali, Srl, B-290863, Oct. 15, 2002, 2002 CPD ¶ 208 at 4-5; Am-Pro Protective Agency, Inc.; MVM, Inc., B-271385.4 *et al.*, Sept. 23, 1996, 96-2 CPD ¶ 192 at 7. In sum, because we see no significant countervailing evidence in the record that created doubt--or should have created doubt--on the part of the agency as to the accuracy of Applied's representations

² As reflected above, TK's bottom-line price was approximately \$1.2 million lower than Applied's bottom-line price. AR, Tab I, SSD, at 5.

³ Applied states that it is not asserting that an impermissible "bait and switch" occurred. Comments at 2. An impermissible bait and switch occurs where a firm either knowingly or negligently represents that it will rely on specific personnel that it does not expect to furnish during contract performance, and that misrepresentation is relied on by the agency and has a material effect on the evaluation results. Data Mgmt. Servs. JV, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. As stated above, none of the key personnel proposed by TK were incumbent personnel. AR, Tab G, TK Proposal, Vol. II, Management Plan, App., Key Personnel, at 1-6.

⁴ As discussed above, the solicitation included a provision requiring the successful offeror to offer incumbent employees a first right of refusal of employment. RFP at 76.

regarding the firm's proposed staffing approach, this protest claim is denied. See Highmark Medicare Servs., Inc.; Cahaba Gov't Benefit Admins., LLC; Nat'l Gov't Servs., Inc., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 14 (agency reasonably relied on proposal representations regarding personnel availability where record contained no significant countervailing evidence reasonably known to agency that should or did create doubt regarding accuracy of representations).

Next, Applied asserts that the agency improperly "failed to perform a proper price reasonableness analysis." Protest at 8. In this regard, Applied alleges that TK proposed lower labor rates than did Applied, and, therefore, TK will be unable to retain qualified personnel to perform the contract. Id. at 8-9. According to Applied, the agency's alleged failure to analyze the reasonableness of TK's comparatively lower pricing threatens the successful performance of the contract. Protest at 9; Comments at 4.

Applied's argument reflects a lack of understanding as to the distinction between price reasonableness and price realism. The purpose of a price reasonableness review in a competition for the award of a fixed-price contract is to determine whether the prices offered are too high, as opposed to too low. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. Arguments, such as the one raised by Applied here, that an agency did not perform an appropriate analysis to determine whether prices are too low such that there may be a risk of poor performance concern price realism. C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3; SDV Solutions, Inc., B-402309, Feb. 1, 2010, 2010 CPD ¶ 48 at 4. A price realism evaluation is not required where, as here, a solicitation provides for the award of a fixed-price contract and does not include a requirement for a price realism evaluation. C.L. Price & Assocs., Inc., supra; WorldTravelService, supra, at 3. Accordingly, we dismiss Applied's allegation because it does not constitute a valid basis of protest. See 4 C.F.R. § 21.5(f) (2011); New Orleans Support Servs. LLC, B-404914, June 21, 2011, 2011 CPD ¶ 146 at 3; JSW Maint., Inc., B-400581.5, Sept. 8, 2009, 2009 CPD ¶ 182 at 6-7 n.3; WorldTravelService, supra, at 4 n.2.

Finally, Applied asserts that the agency's evaluation of Applied's proposal was unreasonable because, in Applied's view, the agency improperly failed to assign any strengths to the proposal and improperly assigned weaknesses to the proposal. We have considered all of Applied's arguments in this area and find no basis to question the agency's evaluation. Applied's most significant arguments are discussed below.

Applied asserts that its proposal should have received a strength under the management plan factor because the proposal described the firm's 97 percent personnel retention rate. Protest at 10; Comments at 5-6. The agency responds that Applied's retention rate did not result in a proposal strength because the solicitation provided for consideration of retention together with hiring and recruiting, and Applied's proposal did not provide a clear and concise approach for hiring and recruiting. Contracting Officer's Statement at 4.

In reviewing a protest against the propriety of an evaluation, it is not our role to independently evaluate proposals and substitute our judgment for that of the contracting activity. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation and applicable procurement statutes and regulations; a protester's mere disagreement with the evaluation does not show that it lacked a reasonable basis. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

As stated above, the solicitation here announced that offerors' management plans would be evaluated for the provision of "a clear and concise approach for recruiting, hiring, [and] retaining personnel to include maintaining adequate workforce and filling vacancies." RFP at 103. Applied acknowledges that the firm's proposal "did not highlight its recruiting and hiring plans."⁵ Comments at 6. Given the solicitation's announcement that an offeror's recruiting, hiring, and retention approach would be evaluated, and given Applied's concession that its proposal did not emphasize two of these three elements, we do not view as unreasonable the agency's determination not to assign the proposal a strength related to Applied's retention rate.

Applied also asserts that the three weaknesses assigned to the firm's proposal under the management plan factor were unreasonable. In this regard, Applied first argues that the weakness for a failure to include a detailed manpower matrix was improper because the proposal included a staffing matrix. Protest at 11; Comments at 7-8 (referencing AR, Tab H, Applied Proposal, Vol. II, Management Plan, at 8).

The solicitation provided that the agency would evaluate whether an offeror's management plan "provides a manpower matrix with proposed skill sets with the minimum qualifications required . . . to successfully accomplish the PWS tasks." RFP at 103. The staffing matrix in Applied's proposal does not include proposed skill sets or minimum qualifications.⁶ AR, Tab H, Applied Proposal, Vol. II, Management Plan, at 8. Without citation to any specific sections of its proposal, Applied argues that "[q]ualifications, skill sets, and labor rates are easily found within other areas of [Applied's] proposal." Comments at 7. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. International Med. Corps, B-403688, Dec. 6, 2010,

⁵ Applied explains that recruiting and hiring plans were not highlighted because Applied's proposal "*demonstrated a 97% retention rate.*" Comments at 6 (emphasis in original).

⁶ The staffing matrix is devoid of any narrative regarding the positions listed within. AR, Tab H, Applied Proposal, Vol. II, Management Plan, at 8.

2010 CPD ¶ 292 at 7. The staffing matrix in Applied's proposal omits information that was called for in the solicitation, and Applied has not adequately explained where the required information appears in the firm's proposal. Accordingly, we view the agency's determination to assign the proposal a weakness related to this omission as reasonable.

Applied also objects to the weakness its proposal received regarding the proposed program manager's qualifications. Protest at 11; Comments at 8. Applied argues that although its proposed program manager does not have a Bachelor's degree, she does have 13 years of managerial experience, and, therefore, she meets the minimum qualifications set forth in the solicitation. Comments at 8.

The solicitation states that the program manager must have a Bachelor's degree or 10 years of documented experience in managing multiple-site, multidisciplinary (*i.e.*, facility and logistics) service support contracts. PWS § 9.2.1. As the agency explains, the résumé of Applied's proposed program manager reflects experience from 2005 to 2011 with managing a multidisciplinary contract, but reflects that prior to 2005 her experience was limited to facility coordination functions. Contracting Officer's Statement at 7 (referencing AR, Tab H, Applied Proposal, Attach. 1, at 1.). In other words, the record shows that the résumé did not reflect 10 years of the type of experience that was specified in the solicitation. Accordingly, we see no basis to question the agency's judgment that Applied's proposal deserved a weakness related to the proposed program manager's qualifications.⁷

Applied additionally challenges the two weaknesses assigned to its proposal under the technical approach factor. With respect to the weakness regarding noncompliance with solicitation's requirement for the times that buildings were to be opened and locked, Applied argues that the firm's proposal included "a minor drafting oversight," and that the agency should have "waived or clarified" the issue. Protest at 11; Comments at 7.

The solicitation specified that "[b]uildings shall be opened one half hour prior to core duty hours (5:30AM) and locked one half hour after core duty hours (6:30PM)." PWS § 2.1.3. As noted above, one section of Applied's proposal stated that Applied's facilities coordinators would "[DELETED]," and another section of the proposal stated that three particular buildings would be locked [DELETED]. AR, Tab H,

⁷ In its protest, Applied also challenged the weakness that its proposal received regarding the qualifications of Applied's proposed lead facility manager, and the weakness that Applied's proposal received under the past performance factor. Protest at 11-12. The agency furnished responses to these allegations. Contracting Officer's Statement at 7-8. Applied did not rebut the agency's responses. Accordingly, we consider Applied to have abandoned these protest allegations. Tiger Truck LLC, B-310759, B-310759.2, Feb. 7, 2008, 2008 CPD ¶ 44 at 3.

Applied Proposal, Vol. I, Technical Approach, at 2, 6. Accordingly, we find reasonable the agency's determination to assign a weakness to Applied's proposal for noncompliance with solicitation's requirement for the times that building were to be opened and locked.

With respect to the weakness that Applied's proposal received for a failure to identify potential risks and mitigation measures, Applied argues that the agency ignored risk factor and risk mitigation "references" that appeared in the management plan volume of the proposal. Protest at 10; Comments at 6. In response, the agency asserts that Applied's proposal received the weakness in question because the proposal "focus[ed] on monitoring and correcting deficiencies as opposed to mitigating the risks from the beginning." Contracting Officer's Statement at 6.

We need not resolve this argument because even assuming that the agency's determination to assign this weakness was shown to be unreasonable, it is clear from the record that Applied has not suffered any competitive prejudice; *i.e.*, given TK's markedly higher evaluation ratings and lower price, the record does not support a finding that, but for this weakness, Applied would have had a substantial chance of receiving the award. Prejudice is an essential element of every viable protest, and where, as here, none is shown or is otherwise evident, we will not sustain the protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

The protest is denied.

Lynn H. Gibson
General Counsel