



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: Superior Government Solutions

File: B-409475.4; B-409475.5

Date: September 25, 2014

Bryan R. King, Esq., and Todd R. Overman, Esq., Bass Berry & Sims, PLC, for the protester.

Michael J. Kraycinovich, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., Cherie J. Owen, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's consideration of strengths associated with proposed subcontractor's performance is reasonable where agency found that subcontractor would be providing critical services.
 2. Where solicitation included conflicting definitions of "major subcontractor" for purposes of the past performance evaluation, thus creating a patent ambiguity, protest that agency improperly evaluated on the basis of one of the definitions rather than the other is denied; in such situations an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the solicitation and then expect relief when the agency does not act in the manner assumed.
-

DECISION

Superior Government Solutions, of Gaithersburg, Maryland, protests the Department of the Army, U.S. Army Materiel Command's, award of a contract to Engineering and Computer Simulations (ECS), of Orlando, Florida, under request for proposals (RFP) No. W900KK-13-R-0022, for support services for the Air Force Medical Modeling and Simulation Training Program. Superior asserts that the agency unreasonably evaluated ECS's proposal.

We deny the protest.

BACKGROUND

The solicitation sought proposals to furnish support services for the Air Force Medical Modeling and Simulation Training Program, including local simulation program management, operations and maintenance, research engineering, and central program office staff support. Agency Report (AR), Tab 3a, Performance Work Statement, § 1. The solicitation provided for award of a predominantly fixed price contract, with a base year and four option years, to the offeror whose proposal represented the best value considering the following evaluation factors: (1) technical (with subfactors for curriculum development and oversight, research and development, logistics, and site operations); (2) program management (with subfactors for integrated master schedule, dispute resolution, overseas support and transition plan, and human relations); (3) past performance; and (4) cost/price.¹ Technical and program management were equally important, and both were more important than past performance. The non-price factors, when combined, were significantly more important than cost/price. AR, Tab 3, RFP at 61-66.

Ten offerors, including Superior and ECS, submitted proposals in response to the RFP. The agency initially awarded the contract to ECS in January 2014. When Superior protested the award to our Office, the Army decided to take corrective action, including re-evaluating proposals and making a new award decision. We then dismissed Superior's protest as academic. B-409475.2, Feb. 24, 2014.

The proposals submitted by Superior and ECS were reevaluated as follows:

Evaluation Factor	Superior	ECS
Technical	Good	Outstanding
Program Management	Good	Outstanding
Past Performance	Satisfactory	Satisfactory
Cost/Price	\$32,801,714.93	\$28,808,185.12

AR, Tab 12, Source Selection Decision Document (SSDD) at 8. The agency again selected ECS for award on the basis that its proposal was both higher-rated and lower-priced than Superior's. Id. at 53, 56. This protest followed.

¹ Possible ratings for the technical and program management factors were outstanding, good, acceptable, marginal, and unacceptable. RFP at 63. Ratings for the past performance factor were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. Id. at 66.

DISCUSSION

Superior protests that the agency did not follow the evaluation criteria in evaluating ECS's proposal under the technical and program management factors. Specifically, the protester first contends that the evaluators failed to consider the risk inherent in ECS's proposed use of five subcontractors in the performance of the contract. Superior argues that, if the evaluators had considered this risk, they would not have rated ECS's proposal outstanding under the technical and program management factors.

This argument is without merit. In this regard, the solicitation defined an outstanding rating as:

Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.

RFP at 66. The agency argues, and we agree, that there was no requirement under this provision to perform a separate risk assessment of ECS's proposed approach. Rather, risk was part of the definition of an outstanding rating, and the agency's belief that ECS's proposal represented a low risk was encompassed by the outstanding ratings assigned to ECS's proposal. In this regard, the agency found 5 strengths in ECS's technical proposal, as well as 2 significant strengths and 10 strengths in its program management proposal, resulting in outstanding ratings under both factors. SSDD at 24-28. Superior has made no showing that there would be significant risk associated with ECS's proposed use of subcontractors. Nor has the protester shown that, to the extent that ECS's proposed use of five subcontractors introduced some level of risk, such risk was sufficient to offset the numerous evaluated strengths in the proposal and render the outstanding ratings unreasonable.

Next, Superior asserts that ECS's proposal should not have received a rating of outstanding under the technical factor because four of ECS's five evaluated strengths under that factor were attributable to one of its subcontractors, the University of Miami (UM). Superior argues that the agency unreasonably allowed UM's contributions to have a significant impact on the overall technical rating, without considering the minimal role UM will play in the performance of the contract. Comments & Supp. Protest at 5-6.

This argument is without merit. As an initial matter, we find that the agency reasonably concluded that ECS's proposal set forth a significant role for UM in the performance of the contract. In this regard, ECS's program management proposal stated that an individual from UM's Injury Research Center would serve as a staff member of the Air Force medical modeling and simulation training program management office. AR, Tab 8, ECS Program Management Proposal, at 30.

Another individual from UM would serve on the Air Force medical modeling and simulation training technical advisory group. Id. ECS's program management proposal further specified that UM would be primarily responsible for medical simulation research and development, simulation and virtual training, medical curriculum development, and medical training. Id. Furthermore, the program management proposal also stated that UM would have

significant involvement in many medical simulation projects, as well as their own internal research and development activities. UM is routinely involved in all aspects of the [central program office] mission, including especially medical simulation R&D, curriculum development, and logistics associated with their worldwide medical simulation network.

Id. at 75.²

ECS's technical proposal further described UM's role in performing the contract, specifying that UM would provide subject matter experts who will help analyze and assess learning needs, human patient simulators, courseware, virtual training, serious medical gaming technology, standardized patients, virtual environment, and task trainers. AR, Tab 7, ECS Technical Proposal at 18-19. In addition, the proposal stated that an individual from UM will "provide mentoring and guidance to our Research and Development team where he will be able to foster collaboration with other research institutions and establish chains of research across the numerous medical research organizations to which he belongs." Id. at 30. Further, its technical proposal indicated that ECS plans to draw on UM's "history of successful research on novel methods using simulation to provide medical training as well as research and analysis on the efficacy of various training approaches and implementations." Id. The proposal also explained that UM had created a Simulation Healthcare Development Research Protocol Workbook that will be used in research educational training programs. Id. at 34.

After reviewing ECS's proposal, the agency evaluators assigned several strengths to ECS's proposal based on UM's contributions. For example, the evaluators assigned a strength related to UM's involvement in developing training and simulation materials, finding that this contribution would serve as a "materiel force developer" to enhance training and sustainment of government personnel. AR, Tab 10, Proposal Evaluation Report, at 36. In this regard, the evaluators found that UM's involvement would establish a "collaborative partnership with an international academic research

² The proposal also specified that UM would begin work on the first day of the contract, attending the contract initiation at the central program office and would frequently visit the office during the course of the contract, although the majority of UM's work would be performed from their main campus in Miami. AR, Tab 8, ECS Program Management Proposal, at 34.

collaboration platform,” which would provide the agency with “a more effective means to develop/review research proposals, increase opportunities for multi-center studies and increase awareness of developing/on-going cutting-edge mod sim research efforts.” Id. at 36, 37. The evaluators further concluded that the procedures, templates, and workbooks supplied by UM constituted a strength because they would provide an additional level of oversight to monitor and track modeling and simulation research, and would enhance proposal development, regulatory body approval, funding, analysis, and program management, resulting in long term cost savings. Id. at 38.

Although the protester correctly notes that the awardee’s proposal did not allocate any of the proposed [REDACTED] full-time positions to UM, Comments & Supp. Protest at 5-6, we agree with the agency that the proposal reasonably indicated that UM will play a significant role in the performance of the contract, both with regard to the products it provides and the functions performed by UM employees. Further, the protester has not identified any solicitation provision--and we can find none--requiring that individuals contributing to the performance of the contract be retained full time. Finally, we see no basis for questioning the reasonableness of the agency’s conclusion that the strengths identified in ECS’s proposal, including those associated with UM’s role under the contract, merited a technical rating of outstanding. Therefore, this protest ground is denied.

Superior also protests that the agency failed to follow the solicitation in evaluating ECS’s past performance. Specifically, Superior notes that Section M of the solicitation provided that, in evaluating past performance, the agency would “focus its inquiries on the offeror’s (and major subcontractor’s) record of performance,” and defined “[m]ajor subcontractor” as one “expected to perform ten percent or more of the proposed effort.” RFP § M.4.0, at 67. Superior asserts that notwithstanding this definition of major subcontractor, in evaluating ECS’s past performance, the agency improperly considered the past performance of subcontractors that will be performing less than 10 percent of the proposed effort.

This argument is without merit. With respect to past performance, the solicitation further provided that offerors were to submit all relevant contracts performed within the past 3 years for “the prime offeror and each major subcontractor,” and stated that “[m]ajor [s]ubcontractor is defined in L.6.3” of the solicitation. RFP § L.6.0, at 53. Section L.6.3, in turn, requested information regarding the proposed effort for “all subcontractors who will be providing critical services or whose subcontract is for more than 10 percent of the total proposed cost/price.” RFP at 55. (The agency explains that, in accordance with the definition provided in section L.6.3, it considered the past performance of subcontractors ECS proposed that will perform critical services even if not 10 percent of the proposed effort. AR at 7.)

Thus, while section M.4.3 defines a major subcontractor as one that will perform 10 percent or more of the proposed effort, section L.6.3 defines a major

subcontractor as one that will perform critical services or whose contract is for greater than 10 percent of the total proposed cost/price. These conflicting definitions of a major subcontractor created a patent ambiguity in the RFP, apparent on the face of the document itself. In such situations an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the RFP and then expect relief when the agency does not act in the manner assumed. Environmental Sys. Research Institute, Inc., B-408847.2, Jan. 17, 2014, 2014 CPD ¶ 53 at 5. Rather, the offeror must challenge the alleged ambiguity prior to the time set for receipt of initial proposals. 4 C.F.R. §21.2(a)(1) (2014); American Connecting Source d/b/a Connections, B-276889, July 1, 1997, 97-2 CPD ¶ 1 at 3. Since Superior did not seek additional clarification prior to the closing time, it may not now timely assert that its interpretation is the correct one. Environmental Sys. Research Institute, Inc., supra. In these circumstances, we find no basis to question the agency's including in the past performance evaluation subcontractors that will perform critical services as well as those whose contract is for at least 10 percent of the proposed effort.

The protest is denied.

Susan A. Poling
General Counsel