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## Decision

**Matter of:** Dellew Corporation

**File:** B-410251.3

**Date:** May 13, 2015

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Kate H. Kennedy, Esq., and Jonathan A. DeMella, Esq., Davis Wright Tremaine LLP, for the protester.

Jackson W. Moore, Jr., Esq., Lauren H. Bradley, Esq., and David L. Hayden, Esq., Smith Anderson Blount Dorsett Mitchell & Jernigan, LLP, for The Logistics Company, the intervenor.

Wade L. Brown, Esq., Department of the Army, for the agency.

Paula A. Williams, Esq., and Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency reasonably evaluated protester's proposal as containing multiple deficiencies for failing to meet various staffing requirements, and properly concluded that the proposal was unacceptable.

2. Protest that agency should have resolved deficiencies in protester's proposal through clarifications is denied; any such exchange would have constituted discussions, not clarifications.

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### DECISION

Dellew Corporation (Dellew), of Kapolei, Hawaii, protests the evaluation of its proposal and the issuance of a task order to The Logistics Company Inc. (TLC), of Fayetteville, North Carolina, by the Department of the Army, Army Contracting Command-Rock Island, under request for proposals (RFP) No. W52P1J-14-R-0018 to obtain logistics support services for the Logistics Readiness Centers (LRCs) at Fort Lee, Virginia (Fort Lee), and at Joint Base Langley-Eustis/Joint Expeditionary Base Little Creek-Fort Story (Joint Base Langley-Eustis) installations. Dellew

argues that the agency's evaluation of its proposal as technically unacceptable was unreasonable.<sup>1</sup>

We deny the protest.

## BACKGROUND

The Army issued the RFP on May 6, 2014, as a small business set-aside, to firms that hold an Enhanced Army Global Logistics Enterprise (EAGLE) basic ordering agreement (BOA).<sup>2</sup> The solicitation sought various logistics support services (including maintenance, supply, and transportation support) at each LRC as identified in the solicitation's performance work statement (PWS).

The solicitation anticipated issuance of a cost-plus-fixed-fee/fixed-price task order for a 1-year base period, with four 1-year option periods. RFP § M.1.1. Proposals were to be evaluated under three factors (technical, past performance, and cost/price), with award to be made to the offeror of the lowest-priced proposal determined to be technically acceptable with substantial confidence in past performance. Id. To receive an overall acceptable rating under the technical factor, a proposal had to meet the minimum requirements of the PWS pertaining to each of the following three subfactors: staffing and management plan, mission essential contractor services, and organizational diagram. Id. at § M.5.1. The solicitation advised offerors that the agency intended to make award without conducting discussions. Id. at § M.4.4.

Of relevance to this protest, the RFP instructed offerors to provide information pertaining to their proposed staffing/labor mix in the format prescribed in Attachment 0002 to the solicitation. Id. at § L.5.2.1.1(c)(4). Attachment 0002 required offerors to provide descriptions of their proposed labor categories; to identify each labor category as CBA [Collective Bargaining Agreement], SCA [Service Contract Act], or exempt, and as FLC [Functional Labor Category] 1 or FLC2; and to indicate proposed FTE [full-time equivalent] counts by functional area.<sup>3</sup> As a related matter, the solicitation included Exhibit AB, Key/Essential and Specified Non-Key

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<sup>1</sup> Dellew is the incumbent contractor for a portion of the services, i.e., those supporting the central issue facility at Fort Lee. RFP at 2.

<sup>2</sup> The Army established the EAGLE program to procure logistics support services such as materiel maintenance services, retail/wholesale supply services, and transportation support services for LRCs and other Army installations around the world by entering into BOAs with contractors. Contracting Officer's Statement of Facts/Memorandum of Law (COSF/MOL) at 1-2.

<sup>3</sup> The RFP included a Department of Labor wage determination under the SCA and a collective bargaining agreement. RFP, attachments 0007 and 0008.

Requirements, which identified key (and specified non-key) contract positions and described the requirements for the positions. As relevant here, the key positions identified included a transportation motor pool (TMP) supervisor at Fort Lee, and an ammunition supply point (ASP) supervisor at Joint Base Langley-Eustis. AR exh. 9, Exhibit AB, Key/Essential and Specified Non-Key Requirements, at 4, 5.

In connection with the above requirements, the solicitation defined FLC1 employees as contract or task order level employees who would directly accomplish the tasks/functions of the workload provided, and FLC2 employees as contract or task order employees required for the completion of the RFP requirements, but not directly performing the tasks/functions of the workload, e.g., a project manager or administrative assistant. RFP at § L.5.2.1.1(c)(5).<sup>4</sup> The solicitation recognized the possibility that offerors might propose “cross utilized FTEs,” that is, employees performing both FLC1 and FLC2 responsibilities. The RFP instructed that such employees “must be listed on the Attachment 0002 Staffing/Labor Mix in all applicable locations (e.g. part time worker (FLC1) and part time manager (FLC2)) with the appropriate percentage of hours applicable to each labor category expressed as a decimal.” Id. at § L.5.2.1.1(c)(6)(xiii).

Prior to the RFP’s closing date, the agency furnished the offerors with additional guidance pertaining to the foregoing requirements. AR exh. 10a, Agency Letter to EAGLE BOA Holders (May 30, 2014). The letter notified offerors that the “key positions listed at Exhibit AB are actual full-time positions that must be proposed.” Id. at 1. In addition, the letter provided the following guidance:

The offeror must review all requirements of the solicitation to determine if it chooses to propose any portion of the positions listed at Exhibit AB, functional area management or supervisors to fulfill the minimum FLC1 hours. Offerors should note that management and supervisory functions are not considered FLC1 tasks. Any division between FLC1 and FLC2 must be consistent with the requirements of the solicitation.

Id.

The solicitation provided that in evaluating proposals under the staffing and management plan subfactor, the agency would consider whether the offeror had

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<sup>4</sup> The RFP provided a minimum workload for Fort Lee and Joint Base Langley-Eustis by identifying the FLC1 hours required for each functional area of maintenance, supply, and/or transportation. For Fort Lee, the minimum hours are 19,200 for maintenance; 80,640 minimum hours for supply; and 67,190 minimum hours for transportation. The minimum hours for Joint Base Langley-Eustis are 112,900 for maintenance and 7,550 for supply. AR exh. 8, Exhibit F, Minimum Functional Labor Category 1 Hours.

demonstrated: (1) a realistic approach to creating separate, autonomous management structures; (2) an adequate rationale for its proposed skill set/skill level determination by functional area; (3) the ability to cross utilize, temporarily reallocate, and rapidly increase and decrease its workforce; (4) a realistic transition plan; and, of greatest significance for this protest, (5) a feasible staffing/labor mix. RFP at § M.5.1.2. Specifically, with regard to the final element above, the RFP advised as follows:

The Government will evaluate the Offeror's entire staffing approach (FLC1 and FLC2) through its proposed labor categories (skill sets) with proposed staffing levels (number of employees) in Attachment 0002-Staffing/Labor Mix to determine if the Offeror's staffing is feasible in relation to the PWS requirements and the provided workload data (see applicable Technical Exhibits) for both the base period and option periods . . . The Offeror's proposed approach must present a staffing approach which demonstrates an adequate understanding of this effort and provides its expected skill level, to include level of responsibility, to ensure successful performance of all the PWS requirements. Additionally, the Offeror's proposed labor category skill level and expected level of responsibility is commensurate with the effort/assigned position.

Id. at § M.5.1.2(e).

On or before the June 5, 2014 closing date, the agency received proposals from 32 offerors, including TLC and Dellew. Consistent with the terms of the solicitation, the agency first reviewed the proposals for compliance with several specified solicitation requirements, including whether the offeror had proposed FCL1 employee hours on its Attachment 0002 staffing/labor mix equal to or greater than the total minimum FLC1 employee hours indicated at Exhibit F.<sup>5</sup> COSF/MOL at 3-6. Only [DELETED] proposals, including Dellew's, were found to be compliant and these proposals were evaluated for technical acceptability. Id.

In evaluating Dellew's proposal under the technical evaluation factor, the agency identified various deficiencies regarding Dellew's proposed staffing and

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<sup>5</sup> As part of its compliance review, the agency calculated that Dellew had proposed the following FLC1 hours for the Fort Lee installation: [DELETED]. For the Joint Base Langley-Eustis installation, Dellew had proposed the following FLC1 hours: [DELETED]. COSF/MOL at 5-6.

management plan subfactor.<sup>6</sup> The chairperson of the source selection evaluation board (SSEB) summarized these deficiencies as follows:

[Dellew] failed to propose a staffing and labor mix that is feasible in relation to the PWS requirements and the provided workload data, and therefore, did not adequately address the elements of M.5.1.2(e) of the solicitation. Specifically, the Offeror's staffing and labor mix is not feasible to perform [1] the painting requirements at Fort Lee, VA (FLVA); [2] the requirements and tasks within the Consolidated Installation Property Book Office (CIPBO) at FLVA; and [3] the [ . . . ] supervisory functions within the Transportation Motor Pool (TMP) at FLVA and the Ammunition Supply Point (ASP) at JBLE.

AR exh. 20, SSEB Chairperson Report to the Source Selection Authority (SSA), at 8.

TLC's proposal was the only proposal rated as technically acceptable. After reviewing the evaluation team's findings, the SSA selected TLC's proposal for award. *Id.* exh. 21a, Source Selection Decision Document. TLC's proposed price of \$65,847,708 was higher than the protester's proposed price of \$59,620,140. Upon receiving notification of the selection of TLC's proposal, Dellew requested and received a debriefing. This protest followed.

## DISCUSSION

Dellew protests the agency's evaluation of its proposal under the staffing and management plan subfactor, arguing that it provided a staffing and labor mix that was appropriate and adequate to perform the solicited logistics services at each installation.<sup>7</sup> Protest at 6-9. As discussed below, we find that the protester's arguments fail to provide a basis for sustaining the protest.<sup>8</sup>

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<sup>6</sup> A deficiency was defined as a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. *Id.* at § M.4.4.2.

<sup>7</sup> In its protest, Dellew also challenged the small business size representation of TLC. A challenge to TLC's size status is not for our review as the authority to determine the awardee's status is vested in the Small Business Administration, not our Office. Bid Protest Regulations, 4 C.F.R. § 21.5(b).

<sup>8</sup> Although we do not address each of the challenges raised by Dellew, we have reviewed all of the protester's arguments and find no basis to conclude that the agency improperly evaluated its proposal as technically unacceptable.

The evaluation of a technical proposal is generally a matter within the agency's discretion, which our Office will not disturb unless it is shown to be unreasonable or inconsistent with the RFP's evaluation criteria and applicable procurement statutes and regulations. Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 9; METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4. In this regard, a protester's mere disagreement with the agency's judgments does not render an evaluation unreasonable. Id.; VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

The protester challenges the agency's conclusion that it did not propose to staff the key position of TMP supervisor at Fort Lee. Dellew argues that it staffed this position as TMP coordinator, and listed it as an FLC1, CBA position on Attachment 0002, staffing/labor mix. According to the protester, but for the nomenclature it used, its proposed TMP coordinator is equivalent to the TMP supervisor, and the agency's conclusion otherwise was irrational and unreasonable.<sup>9</sup>

As noted above, the solicitation identified the TMP supervisor as a key position and described the responsibilities associated with the position as including supervision of the in-house TMP maintenance function and management of the activities of multiple dispatchers and drivers." AR exh. 9, Exhibit AB, Key/Essential and Specified Non-Key Requirements, at 4. The solicitation expressly directed offerors that their proposed staffing approach must demonstrate an adequate understanding of the expected skill level and level of responsibility required to ensure successful performance of the solicited logistic support services. Moreover, prior to the closing date for receipt of proposals, the agency provided additional guidance in its notification letter that the identified key positions such as the TMP supervisor were "actual full-time positions that must be proposed," and that management and supervisory functions were not considered FLC1 tasks. Id. exh. 10a, Agency Letter to EAGLE BOA Holders, at 1 (May 30, 2014).

Our review of Dellew's proposal and the agency's contemporaneous evaluation record lead us to conclude that the agency reasonably evaluated Dellew's proposed staffing and management plan as deficient for failing to include the key position of TMP supervisor. To the extent the protester intended its proposed TMP coordinator to perform both direct productive work and supervisory work, i.e., to cross-utilize the

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<sup>9</sup> As further support, the protester alleges that the TMP supervisor position is currently being performed by a CBA employee designated as the TMP coordinator. While that may be true, this fact by itself does not negate the agency's legitimate needs under this acquisition. Each procurement stands alone and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under the present procurement. JRS Mgmt., B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4.

employee between FLC1 and FLC2 tasks, the solicitation required the protester to show the percentage of hours applicable to each labor category on Attachment 0002. Id. at § L.5.2.1.1(c)(6)(xiii). Nothing in the protester's proposal evidences its intent to cross-utilize its TMP coordinator. While Dellew disagrees with the agency's evaluative judgment, the protester has not shown it to be unreasonable.

Similarly, we have no basis to question the agency's finding that Dellew failed to staff the ASP supervisor key position for the Joint Base Langley-Eustis installation. The record shows that Dellew provided the labor category "JBLE-Story [Joint Base Langley-Eustis] ASP Supervisor," on its Attachment 0002, but the protester did not propose any FTEs for that labor category. Id. exh. 12b, Dellew's Attachment 0002, at 3-4. While the agency reports that during a review of the protester's organizational diagram, the evaluators noted that Dellew had allocated 1.0 FTE for the ASP supervisor position, see COSF/MOL at 21, this was insufficient to cure the above failure since the RFP specifically advised that the agency would evaluate offerors' staffing approaches based on the information furnished in Attachment 0002. Because the protester did not include any FTEs for the ASP supervisor position in its Attachment 0002, the evaluators reasonably assigned a deficiency under the staffing and management plan subfactor. In this regard, it is the offeror's responsibility to submit an adequately written proposal for the agency to evaluate, SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 5, and agencies are not required to adapt their evaluations to comply with an offeror's submission, or otherwise go in search of information that an offeror has omitted or adequately failed to present. LS3 Inc., B-401948.11, July 21, 2010, 2010 CPD ¶ 168 at 3 n.1; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 3.

In contesting the evaluators' rating, Dellew states that its failure to enter an FTE for its proposed ASP supervisor on Attachment 0002 was an obvious clerical error. Dellew argues that the agency should have resolved any questions regarding the omission of an FTE for the ASP supervisor position on Attachment 0002 by seeking clarifications from Dellew.

Federal Acquisition Regulation (FAR) § 15.306 describes a spectrum of exchanges that may take place between a contracting agency and an offeror during negotiated procurements. Clarifications are limited exchanges between the agency and offerors that may occur when contract award without discussions is contemplated; an agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2. Although agencies have broad discretion as to whether to seek clarifications from offerors, offerors have no automatic right to clarifications regarding proposals, and such communications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Hawk Institute for Space Sciences, B-409624, June 20, 2014, 2014 CPD ¶ 200 at 4.

We find no merit to Dellew's contention that the agency was required to seek clarifications from the protester with respect to the above deficiency. As noted above, an agency is permitted, but not required, to obtain clarifications from offerors. In any event, to render its proposal acceptable, the protester would have to cure the above deficiency by amending its Attachment 0002, which would have constituted discussions. See id. at 4-5.

The protest is denied.<sup>10</sup>

Susan Poling  
General Counsel

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<sup>10</sup> To the extent Dellew asserts that the agency improperly failed to consider its lower price in making the selection decision, this assertion is without merit. Since the agency reasonably evaluated Dellew's proposal as unacceptable under the technical evaluation factor, its proposal cannot be considered for award, notwithstanding its lower price. Coastal Drilling, Inc., B-285085.3, July 20, 2000, 2000 CPD ¶ 130 at 6.