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**Comptroller General
of the United States**

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

Decision

Matter of: Logis-Tech, Inc.

File: B-407687

Date: January 24, 2013

James K. Bounds, John Senter, and Robert Grasso, for the protester.
Maj. Michael C. Evans, and Lisa L. Baker, Esq., United States Marine Corps, for the agency.
Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest filed at the Government Accountability Office challenging the issuance of a task order is timely when filed within 10 days of when the agency dismissed the agency-level protest for lack of jurisdiction.
 2. Protest that agency misevaluated proposals is denied where evaluation was reasonable and consistent with evaluation criteria in task order solicitation.
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DECISION

Logis-Tech, Inc., of Manassas, Virginia, a small business, protests the issuance of a task order to Professional Solutions Delivered, LLC (PSD), of Ruther Glen, Virginia, under request for task order proposals (RFTOP) No. N00024-12-R-3398, issued by the United States Marine Corps, for services to support the item unique identification program. The RFTOP was issued to firms holding Seaport-e task order contracts awarded by the Navy. Logis-Tech argues that the Marine Corps misevaluated Logis-Tech's proposal under the staffing and personnel factor, and that the agency unreasonably failed to find PSD's lower-priced proposal unacceptable.

We deny the protest.¹

¹ Logis-Tech was not represented by counsel that could be admitted to a protective order and, therefore, did not have access to source selection sensitive and proprietary information. Accordingly, our discussion in this decision is necessarily

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BACKGROUND

The RFTOP sought proposals from Seaport-e contractors to provide marking and labeling services for equipment and products at multiple locations.² RFTOP amend. 1, at 2. The RFTOP contemplated that a single task order for fixed-price items would be issued on a best value basis, considering both price and non-price factors. Id. at 28. The RFTOP identified three non-price evaluation factors, listed in descending order of importance: understanding and approach, staffing and personnel, and past performance.³ Id. Price was stated to be equal in importance to the non-price factors combined in determining which vendor's proposal provided the best value. Id.

With regard to the staffing and personnel factor, the RFTOP instructed vendors to, among other things, "describe the personnel allocated to complete each PWS [performance work statement] requirement by providing a breakout of the labor hours and categories proposed for each task. . . ." RFTOP amend. 1, at 26. The RFTOP stated that the government would evaluate the firm's proposed use of labor and the quality of their proposed personnel. Id. at 29. Among other things, proposals would be evaluated on the "clarity and thoroughness of the staffing plan in mapping appropriate personnel to the PWS requirements." Id.

The Marine Corps received proposals from PSD, Logis-Tech, and three other vendors. As relevant here, Logis-Tech's proposal described how the firm would perform "data label marking" to meet PWS requirement 2.1.2 ("ID, Assessment, and Marking") and stated that the firm would use "engineering analysis" to evaluate suitable alternative labeling solutions. Agency Report (AR), Tab 4, Logis-Tech Proposal, Understanding and Approach, at 15, 17. In another section of its proposal, Logis-Tech provided staffing charts that identified key personnel, as well as the labor categories and hours allocated to each PWS requirement. AR, Tab 4,

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general in order to avoid disclosure of this information. Our conclusions, however, are based on our review of the entire record.

² Generally, the work to be performed included: (1) identifying and inventorying equipment to determine marking requirements; (2) marking items; (3) providing configuration control; and (4) providing program control. RFTOP amend. 1, at 6.

³ The RFTOP provided that the understanding and approach factor, and the staffing and personnel factor, would be rated adjectivally: outstanding, good, acceptable, marginal, or unacceptable. For past performance, ratings would consider both the relevance of the firm's past performance (rated as very relevant, relevant, somewhat relevant, or not relevant) and the degree of confidence reflected in the firm's performance record (rated as substantial confidence, satisfactory confidence, limited confidence, or no confidence). RFTOP amend. 1, at 30-31.

Logis-Tech Proposal, Staffing and Personnel, at 4-6. However, Logis-Tech did not identify any engineering labor categories or hours anywhere in its staffing charts. Id.

In evaluating Logis-Tech’s proposal under the staffing and personnel factor, the Marine Corps evaluators assigned the proposal a strength for the firm’s “ideal and responsive mix of labor categories and hours” to meet PWS requirements. AR, Tab 2, Evaluation Report, at 12. However, the agency also assigned the following weakness to the proposal:

The total number of labor hours by labor type proposed by the Offeror is less than the total estimated in the IGCE [independent government cost estimate] The distribution of labor categories is comparable to the IGCE, with the exception of a lack of engineering hours. This may introduce risk should this expertise be needed in execution of the task.

Id. at 13.⁴ As a result of the strength and weakness, the Marine Corps assigned Logis-Tech’s proposal a rating of good under the staffing and personnel factor.

The evaluation ratings for Logis-Tech and PSD are reflected below.

	Understanding & Approach	Staffing & Personnel	Past Performance	Price
PSD	Outstanding	Outstanding	Relevant/ Substantial Confidence	\$20.1 Million
Logis-Tech	Outstanding	Good	Relevant/ Substantial Confidence	\$30.1 Million

AR, Tab 3, Debriefing Letter, at 2. The contracting officer determined that PSD’s higher-rated, lower-priced proposal offered the best value, and PSD received the task order.

On September 26, 2012, the Marine Corps notified all vendors of the selection decision by posting notice to the Seaport-e electronic portal and sending a debriefing letter to each of the offerors, including Logis-Tech. The debriefing letter to Logis-Tech listed the evaluation ratings for both PSD and Logis-Tech, and it provided Logis-Tech with the narrative explanation for its proposal ratings. AR, Tab 3, Debriefing Letter, at 1-4.

⁴ The agency assessed a second weakness in Logis-Tech’s proposal for the firm’s failure to provide labor hours and categories for option task 1 (PWS 2.2). AR, Tab 2, Evaluation Report, at 13. Logis-Tech does not challenge this aspect of the evaluation.

On October 5, Logis-Tech filed an agency-level protest with the contracting officer, challenging the evaluation of both its and PSD's proposals under the staffing and personnel factor. AR, Tab 10, Agency-Level Protest, at 1-2. On October 12, the Marine Corps dismissed the agency-level protest on the grounds that the agency lacked jurisdiction to consider the protest. On October 16, Logis-Tech filed this protest with our Office, reasserting the complaints raised in its agency-level protest.

DISCUSSION

Logis-Tech contends that the agency miscalculated Logis-Tech's and PSD's proposals under the staffing and personnel factor. More specifically, the protester attacks the agency's assessment of a weakness to the firm's proposal for lack of engineering hours, and further contends that PSD proposed low labor hours that should have rendered its proposal "nonresponsive." Protest at 1-2.

Timeliness

As an initial matter, the Marine Corps argues that Logis-Tech's protest should be dismissed as untimely because it was filed with our Office more than 10 days after the debriefing in which Logis-Tech learned the basis for its protest. The Marine Corps argues that Logis-Tech cannot base the timeliness of its GAO protest on its filing of a timely agency-level protest, because the Marine Corps, in its view, lacks jurisdiction to consider an agency-level protest of a task order.

The Marine Corps' argument that it lacks jurisdiction to hear an agency-level protest involving the issuance of a task or delivery order under a multiple-award, indefinite-delivery, indefinite-quantity contract is based on language in the statute that authorizes--and establishes a preference for the multiple awards of--task order contracts. See generally 10 U.S.C. §§ 2304a-2304e (defense agencies); 41 U.S.C. §§ 4101-4106. The Marine Corps points to certain provisions within the statutory scheme authorizing the use of task order contracts that limit the rights of companies to file a protest. Among other things, these provisions state that the "Comptroller General of the United States shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B)." 10 U.S.C. § 2304c(e)(2). Hence, the Marine Corps concludes that it may not hear an agency-level protest of the issuance of a task order (under a task order contract), and that the time lost by the protester filing an unauthorized agency level protest now means that the protester cannot file a timely protest with the GAO.

In contrast, Logis-Tech counters that its agency-level protest was timely filed, and that upon receipt of the Marine Corps' dismissal of its protest, it timely filed a follow-on protest with GAO. Logis-Tech also points out that the Marine Corps encourages its contractors to resolve disputes directly with the agency when possible. Protester's Opposition to Dismissal, Oct. 24, 2012, at 1.

The only issue before GAO is whether the task order protest filed with GAO is timely. To answer this question, we need look no further than our Bid Protest Regulations. The timeliness rules within our Bid Protest Regulations, in relevant part, provide as follows:

[i]f a timely agency-level protest was previously filed, any subsequent protest to GAO filed within 10 days of actual or constructive knowledge of initial adverse agency action will be considered, provided the agency-level protest was filed in accordance with paragraphs (a)(1) and (a)(2) of this section, unless the agency imposes a more stringent time for filing, in which case the agency's time for filing will control. . . .

4 C.F.R. § 21.2(a)(3) (2012) (emphasis added).

Our timeliness rules do not require GAO to consider whether the initial adverse agency action is in the form of dismissal (for lack of jurisdiction or other reasons) or denial on the merits. So long as the protest was filed with the agency in a timely manner, it will be considered timely with our Office if filed within 10 days of when the protester actually or constructively learned that the agency denied or dismissed the protest. For these reasons, we conclude that Logis-Tech's GAO protest is timely because it was timely filed with the agency, and then timely filed within 10 days of the agency's decision to dismiss the agency-level protest. See 4 C.F.R. § 21.2(a)(3).

Logis-Tech's Evaluation Challenges

Logis-Tech argues that the Marine Corps misevaluated the firm's proposal by assigning a weakness under the staffing and personnel factor for not identifying engineering labor hours in the staffing and personnel section of its proposal. Protest at 1. Logis-Tech argues that the RFTOP did not include an engineering requirement and that these hours were to be "costed through the company overhead rather than burdening the proposal with additional pricing"; because there were no costs included in the proposal, Logis-Tech contends, it did not include hours in its staffing matrix. Comments at 2.

Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Bay Area Travel, Inc., et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9; Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 5-7. As with any procurement, an offeror has the burden of submitting an adequately-written proposal, and it runs the risk that its proposal will be evaluated unfavorably when it fails to do so. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Although the RFTOP did not expressly require engineering tasks or hours, as discussed above, the RFTOP did require offerors to describe the personnel they

allocated to performance of each PWS task and to include a breakout of the labor hours and categories proposed. RFTOP amend. 1, at 26. Offerors were further advised that the clarity of their staffing plan in mapping personnel to the PWS requirements would be evaluated. Id. at 29.

Logis-Tech identified its approach to PWS 2.1.2 (“ID, Assessment, and Marking”) to include engineering analysis to identify alternative label solutions. AR, Tab 4, Logis-Tech Proposal, Understanding and Approach, at 15, 17. When it did so, it was required by the RFTOP to include a breakout of the labor hours for engineering in its staffing plan. See RFTOP amend. 1, at 26. The agency was within its discretion to consider the lack of engineering hours under the staffing and personnel evaluation criteria because the firm’s staffing plan did not map the personnel to the PWS requirements as required. See id. at 29. Although Logis-Tech contended, during this protest litigation, that it did not identify engineering hours because it intended to absorb the cost of the engineers, this was not made clear in Logis-Tech’s proposal and does not relieve the firm of its obligation under the RFTOP to provide the appropriate breakout and mapping of its personnel. Accordingly, we find the agency’s assessment of a weakness to Logis-Tech’s proposal to be reasonable and in accord with the stated evaluation criteria.

Next, Logis-Tech challenges the agency’s evaluation of PSD’s proposal under the staffing and personnel factor. More specifically, Logis-Tech complains that due to its low price, PSD could not have offered an acceptable workload estimate. Comments at 2-3.

Our review of the Marine Corps’s evaluation of PSD shows that the agency had a reasonable basis to conclude that the firm’s staffing and personnel approach was acceptable. The record shows that PSD’s proposed labor hours were lower than Logis-Tech’s, but the agency determined that PSD’s mix of labor categories and hours were supported by innovative approaches and streamlining initiatives. Source Selection Technical Evaluation Report, Sept. 18, 2012, at 18. Furthermore, unlike Logis-Tech, PSD provided “clarity” in its staffing plan and a “comprehensive analysis as a basis of estimate.” AR, Tab 12, Source Selection Technical Evaluation Report, at 18. Based on our review of the record, we find no basis to sustain this ground of protest.

In sum, we find no error in the agency’s evaluation of Logis-Tech’s or PSD’s proposal, or the agency’s decision to issue the task order to PSD.

The protest is denied.

Susan A. Poling
General Counsel