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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: Ace Info Solutions, Inc.

File: B-295450.2

Date: March 7, 2005

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John R. Caterini, Esq., and Barry C. Hansen, Esq., Department of Justice, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging evaluation of protester's technical/management proposal is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria and is supported by the record.

DECISION

Ace Info Solutions, Inc., a small disadvantaged business, protests the failure of the Department of Justice (DOJ) to award it a contract under request for proposals (RFP) No. DJJL-04-RFP-2068, for the information technology (IT) support services program, referred to as the ITSS III program. Ace Info argues that the agency misevaluated its proposal and, as a result, failed to award the firm one of the three small business awards contemplated by the solicitation.

We deny the protest.

BACKGROUND

The primary purpose of this procurement is for the successful contractor(s) to provide nonpersonal, labor hour services for a wide range of IT related tasks and processes as described in the statement of work (SOW) to support the DOJ and other federal agencies. As a secondary purpose, the solicitation provides for the acquisition, delivery, installation, warranty, maintenance, or upgrade of IT hardware, IT software, IT communications technology, and other equipment and supplies. RFP amend. 2, at 11, 22.

As amended, the RFP provided for the award of up to 12 indefinite-delivery, indefinite-quantity contracts, each for a base year with six 1-year options. The RFP provided for the award of at least three of the contracts to small business concerns. RFP amend. 2, at 8-9, 46. The ITSS III contractor(s) will be required to provide all management, administration, staffing, planning, scheduling and procuring for all items of service or supply required by the contract and/or task order. Id. at 22. The RFP stated that performance of all services under the ITSS III contracts would be initiated by the agency's issuance of task orders in response to a work plan request (WPR). Id. at 12, 23-24.¹ The RFP warned that the agency intended to award the contracts without conducting discussions, and cautioned offerors to submit their best proposals initially. Id. at 97, 112, 115.

Under the RFP, each award was to be made to the responsible offeror whose proposal represented the best value to the government. The RFP identified an evaluation scheme in which the combined non-price evaluation factors were significantly more important than price. The RFP instructed each offeror to submit a technical/management proposal addressing all technical evaluation factors, as well as a separate business/pricing proposal consisting of offeror certifications, teaming and subcontracting participation plan, completed business management questionnaire, pricing tables, and small business subcontracting plan (large business offerors only).

¹ When issued, a WPR would include, among other things, a SOW describing the work to be performed, the period of performance, and the date and time the contractor's response to the WPR is due. Responses to the WPR would usually be due within 10 calendar days. RFP amend. 2, at 23-24.

The evaluation factors and subfactors, as well as their respective weights were as follows:

| Factor | | Weight |
|---|------------------------------|------------|
| 1. Offeror's comprehensive Technical Capability | | 110 points |
| a. | Management Plan and Approach | 20 points |
| b. | Key and Core Personnel | 20 points |
| c. | Technical Proficiency | 10 points |
| d. | Experience | 25 points |
| e. Past Performance (worth 15 points) and Multiple Award Vehicle Statistics (worth 10 points) | | 25 points |
| f. | Small Business Usage | 10 points |
| 2. Total Evaluated Price ² | | |

RFP amend. 2, at 118-20.

Section L of the RFP contained detailed proposal instructions and identified specific information that offerors were expected to provide under each evaluation factor. For example, with regard to the management plan and approach subfactor, the RFP directed offerors to provide

a clear demonstration that the offeror is capable of efficient and effective participation in the task order placement (i.e., competition) process as well as successfully managing simultaneous work assignments that may be performed under multiple task orders issued under the contract.

RFP amend. 2, at 104. Under this subfactor, offerors were to address the following three elements in their technical/management proposals: (a) the location of the offeror's program management office; (b) an organizational chart with a brief description of the lines of authority; and (c) the description of the offeror's management and approach to the contract and individual task orders. *Id.* at 104-05.

Forty-six firms submitted timely proposals which were evaluated by a technical evaluation panel (TEP). The TEP prepared an extensive report reflecting each evaluator's score and a narrative assessment of each proposal under each area of

² Under the RFP, price would not be numerically scored but would be evaluated for reasonableness, realism, and balance.

evaluation, the consensus technical scores, and a summary of the TEP's conclusions regarding each proposal as supported by a more detailed discussion of the strengths and weaknesses of each proposal. The contracting officer, who was the source selection authority for this procurement, ranked the proposals relative to the other proposals on the basis of the initial technical scores and the prices proposed by assigning weighted points for technical merit and for price, with technical merit significantly more important than price. Based on this overall ranking, the contracting officer selected 17 large businesses and 4 small business concerns as the most highly rated and capable offerors. Agency Report (AR) exh. 17, attach. 2, Technical Evaluation Report; AR exh. 12, Business/Price Evaluation Report; AR exh. 13, Contracting Officer's Ranking of Proposals.³ Ace Info was assigned 78.0 points overall (its initial technical score was 63 points), and its proposed price was [DELETED]. The contracting officer decided that proposals with rankings lower than 79.0 points would not be included in the group of proposals that reflected the most highly rated and capable offerors.

The TEP then performed tradeoff assessments among the most highly rated and capable offerors and recommended awards to nine large business offerors and three small business concerns. AR exh. 7, TEP's Best Value Recommendation Report. The contracting officer reviewed the TEP's report and agreed with the award recommendations. Subsequently, 12 contracts were awarded; of these, small business awards were made to 3 firms. Upon learning that it did not receive an award, and after receiving written and oral debriefings from the agency, Ace Info filed this protest.⁴

³ The most highly rated and capable offerors had received weighted scores ranging from 79.2 points to 93.1 points. These offerors proposed prices ranging from \$572,153,262 to \$858,367,893.

⁴ Throughout its protest pleadings, Ace Info repeatedly asserts that during the debriefings, the explanations given by the agency officials went well beyond the contemporaneous evaluation record and/or reflected additional evaluation errors and, therefore, represented post hoc rationalizations that should carry little or no weight. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. We do not agree. Our review of the contemporaneous evaluation record shows that the evaluators identified those areas in Ace Info's proposal that were considered weaknesses and the agency officials' statements simply constitute explanations of the evaluators' conclusions rather than new rationales.

DISCUSSION

Ace Info challenges DOJ's evaluation of its proposal under three technical subfactors, contending its proposal was deserving of a higher rating under each of these subfactors.

The evaluation of technical proposals is a matter within the discretion of the contracting agency. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Consultants In Continual Improvement, B-289351, Feb. 12, 2002, 2002 CPD ¶ 40 at 2. The fact that the protester disagrees with the agency does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5-6. Based on our review of the record, including the contemporaneous evaluation record, the written proposals, and the parties' pleadings, we have no basis to find the evaluation was unreasonable.

Management Plan and Approach

DOJ considered Ace Info's technical/management proposal to be acceptable, assigning the proposal an overall technical merit score of 63 points. However, Ace Info complains that its proposal warranted a higher technical score under the management plan and approach subfactor, alleging that the weaknesses assigned to its proposal were based on the agency's misunderstanding of its proposal, which Ace Info maintains it could have clarified had the agency asked the firm to do so. Because the reasonableness of the agency's evaluation under this subfactor is a key issue in this protest, we reproduce below excerpts from Ace Info's proposal.

With regard to the evaluation of the management plan and approach subfactor, section L.5.3.2(c)(2) of the RFP requested that each offeror "Indicate if you will submit proposals at the task order level against ALL DOJ WPRs or if you have policies that limit your proposing to only certain sizes or scopes." RFP at 105. In its proposal, Ace Info stated:

2.2.2. Submission of Proposals at the task order level to ALL DOJ WPRs (L.5.3.2.c.2)

ITSS-PT (Ace Info) has no limitations or policies to restrict any size DOJ WPRs. All WPRs regardless of size will follow standard procedures associated with proposal of a [SOW] and Estimates. Assignments that may require an exception to a normal estimation process (10 days or less) will be communicated to DOJ within 24 hours for discussion. Complex estimates may require, the hiring of temporary resources to perform specific technologies, specific

technology training, time to evaluate large size requirements to application components, developing a testing strategy, method of implementation (water fall, spiral, phased), assumptions that require issues to be resolved, risk that may need very detailed mitigation plans, and/or clarification of requirements). Various levels of estimates may be needed to satisfy any time considerations for delivery of an estimate (Ballpark +/- 100%, Rough order of Magnitude +/- 30% and Fixed Cost +/- 0%), a waiver approval process for specific (deliverables, methods and procedures, and quality standards).

AR exh. 22, Ace Info's Technical/Management Proposal, at 6-7.

As relevant here, another RFP requirement set forth at section L.5.3.2(c)(4) requested that the offeror's proposal "Indicate how long would it take for you to start work on a task order after it has been awarded." RFP amend. 2, at 105. In its proposal, the protester responded:

2.2.4. Duration to Start Work on a Task Order after Award Received
(L.5.3.2.c.4)

ITSS-PT will provide for specific start dates in the SOW for task orders that are approved to begin work. By providing this information in the SOW, ITSS-PT will be able to perform very accurate resource utilization. ITSS-PT is suggesting to work within an operating model where the DOJ is a part of an over-seeing management board also referred to as a governance body (Configuration Control Board). The control board would meet at designated times during the month to discuss:

- Prioritize ITSS-PT's work queue (pending and approved), daily operations to planned schedules, current status, any open issues and/or action plans, all risk identified in the program office, and any constraints and/or know problems
- Scope and objectives of the Program Office
- Performance of the Program Office to (delivery, execution, planning, and service)

Specific to requirements on a Task Order, further analysis during the proposal estimate will determine the impact to Prime and/or Sub-contractors that will be better aligned to the working effort. Current employees within the employee technical staff and Function Analysts could potentially start immediately, or with hire process of specific

resource skills and/or need for additional resources (keeping critical resources working prioritized tasks).

Id. at 7. In concluding that Ace Info's proposal met the overall requirements of the management plan and approach subfactor, the TEP assigned Ace Info's proposal 13 of 20 technical points under this subfactor. However, the TEP identified specific weaknesses in the protester's proposed approach to managing the contract and task orders. Specifically, the TEP found that:

The offeror appears not to understand the concept of managing multiple task orders concurrently under the ITSS environment. The offeror will assign DOJ as a corporate entity to a "Board" prioritizing multiple WPRs, which is not the way ITSS III is designed to function. In addition, the offeror provided very qualified statements regarding its intent to respond to ITSS III WPRs, and it also gave a qualified statement with regard to the contract start up period.

AR exh. 17, attach. 3, Technical Evaluation Report, at 25.

Ace Info asserts that it was improper for the agency to downgrade its proposal here because the agency erroneously believed that its proposed configuration control board (Board) would "require participation by DOJ in responding to WPRs for new task order work, many of which require a fast turnaround time." Protest at 1. More specifically, the protester relies on section 2.2.4 of its proposal, as quoted above, to support its argument that the firm planned to use the Board only to "prioritize task orders according to the RFP requirements, which already had been awarded [to Ace Info] and to assure compliance with other contract requirements." Id. at 6. In explaining why its proposal was misevaluated in this area, the protester points to its proposal response in section 2.2.2 which makes no reference whatsoever to the use of the Board in processing WPRs. Protester's Comments, Jan 13, 2005, at 8-9.

We have no basis to question the agency's evaluation under this subfactor. For this subfactor, the offeror was to indicate if it would submit proposals at the task order level for WPRs or if the offeror had policies limiting its proposal to only certain sizes or scopes. We agree with the agency that Ace Info's proposal response, as quoted above, was not clear concerning whether or not it would propose on all WPRs. While Ace Info stated that it had "no limitations or policies to restrict any size DOJ WPRs," AR exh. 22, Ace Info's Technical/Management Proposal, at 6, it then proceeded to qualify its response by stating that its ability to estimate the work and submit a proposal "may require an exception to a normal estimation process" and that "complex estimates" may require hiring of "temporary resources, . . . specific training" and "time to evaluate large size requirements," among other things. We

believe the agency reasonably found that this additional language qualified its initial commitment.

Also, the agency reasonably downgraded Ace Info's proposal based on its planned use of a Board in the context of this procurement. For instance, the agency explains that contrary to the protester's view, the protester's proposal indicated, as quoted above, that the Board, referred to as a "governance body," would meet at "designated times" to prioritize the "work queue (pending and approved)," and would be the "Governing body for AceInfo activities at US DOJ." AR exh. 22, Ace Info's Technical/Management Proposal, at 12. The record indicates that the evaluators concluded that Ace Info did not understand "the way ITSS III is designed to function" because the successful contractor--not DOJ--would be responsible for the management, administration, staffing, planning, and scheduling of all services and/or supplies. Even beyond the obvious differing roles and responsibilities of the successful contractor(s) and the agency under this program, DOJ reasonably believed that using a Board to set priorities for task orders was unnecessary and burdensome given that the ITSS III contract requires the contractor to complete the task order work within the time specified therein by the agency. As the agency noted, and the record confirms, if the agency issues multiple task orders to a contractor, or a contractor receives task orders from multiple agencies, the contractor must timely perform each task order in the time specified in each task order even if multiple tasks are to be performed simultaneously. The agency reasonably concluded that the Board proposed by Ace Info would not be compatible with the contractor's responsibility to manage and perform any task orders issued to the firm.

To the extent that Ace Info argues in its protest that the agency misunderstood the concept of using a Board, it is an offeror's obligation to submit an adequately written proposal for the agency to evaluate where, as here, the offeror is specifically on notice that the agency intends to make award on the basis of initial proposals without discussions. Chant Eng'g Co., Inc., B-279049, B-279049.2, Apr. 30, 1998, 98-2 CPD ¶ 65 at 7; see also Dual, Inc., B-279295, June 1, 1998, 98-1 CPD ¶ 146 at 5. It was Ace Info's responsibility to provide sufficient information in its initial proposal regarding the firm's planned use of the Board to enable a meaningful review of the protester's approach in managing multiple task orders. Given Ace Info's failure to explain in its proposal the precise role of the Board, we have no basis to question the reasonableness of the agency's evaluation and we reject the protester's complaint that it was improperly assigned a weakness for the management plan and approach subfactor.

We also find reasonable DOJ's evaluation of Ace Info's response to the request for information concerning how long it would take the firm to start performance of a task order after DOJ issued the order. Ace Info's response in its proposal, as quoted above, fails to unequivocally address the agency's request for information

concerning the time Ace Info would need for startup of task orders issued to the firm.

Key and Core Personnel

Under this subfactor, as relevant here, the RFP requested that offerors provide information concerning the experience of the proposed program manager (a key personnel position) and the two task managers; together, these three individuals comprise the project management team. RFP amend. 2, at 105-06.

In its proposal, Ace Info furnished a resume for its proposed program manager. AR exh. 22, Ace Info Technical/ Management Proposal, at 26-29. The evaluators concluded from their review of Ace Info's proposal that the firm's proposed key and core personnel were acceptable and assigned Ace Info an overall technical score of 12 points for this subfactor. The evaluators noted, however, that the proposed program manager was "not a current member of the management team, and would have to learn company policies, procedures, and programs." AR exh. 17, attach. 3, Technical Evaluation Report, at 26. In addition, during the debriefing, the contracting officer pointed out that the protester's proposed program manager had no government contract experience. AR exh. 2, Report on Oral Debriefing, at 5. Ace Info disagrees with this rating, correctly noting that the solicitation did not require offerors to propose either an "in-house" program manager or one with experience in government contracting. Protester's Comments supra, at 13-14. Nonetheless, given that this subfactor included consideration of the program manager's experience generally, we think it was reasonable for the agency to consider the program manager's lack of experience with the firm and government contracts in scoring Ace Info's proposal under this subfactor. This being the case, there was nothing unreasonable with the agency's evaluation judgments.

Small Business Usage

Ace Info takes issue with the 4 points it received under this subfactor because the firm proposed a 76-percent utilization of small business participation which it argues reflects a realistic and achievable approach meriting the maximum available score of 5 points. Protester's Comments, supra, at 15. In view of the evaluators' positive assessment of the protester's small business utilization and the fact that several proposals demonstrated a higher small business participation rate than the protester's rate and that those were the proposals that received 5 points, we see no basis to object to the technical score assigned here.

In sum, having determined that the agency's evaluation of Ace Info's technical/management proposal was reasonable and consistent with the stated evaluation factors here, we have no basis to disturb the resulting awards under this RFP.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Ace Info has raised a number of other issues, none of which provide a basis to sustain the protest.