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## Decision

**Matter of:** Engineering Management & Integration, Inc.

**File:** B-400356.4; B-400356.5

**Date:** May 21, 2009

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### DIGEST

Where solicitation instructed offerors that their proposed staffing plans should at a minimum indicate the percentage of their staffs with third party certification, and protester identified in its proposal the number of its staff members holding third party certification, protester's failure to express the proposed staff numbers also as a percentage of total staff may not reasonably be viewed as a deficiency since the information that protester did furnish in fact provided a better understanding of its proposed staffing.

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### DECISION

Engineering Management & Integration, Inc. (EM&I) of Herndon, Virginia protests the rejection of its proposal and the award of contracts to six other offerors under request for proposals (RFP) No. ED-08-R-0014, issued by the Department of Education for business support services for the Office of Federal Student Aid. The protester contends that the agency unreasonably rejected its proposal as unacceptable.

We sustain the protest.

### BACKGROUND

The RFP contemplated the award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts to acquire support services in the areas of independent verification and validation, program quality assurance/enterprise quality management, program/project management, acquisition management, and investment management. Offerors were to furnish burdened hourly rates for 20 labor categories.

The anticipated period of contract performance was 10 years (a 2-year base period followed by four 2-year option periods), and the estimated value of the requirement over the 10-year period was \$25 million. The solicitation explained that after award of the contracts, task orders for services would be competed among the awardees.

The RFP provided for award to the offerors whose proposals were determined to represent the best value to the government, with proposals to be evaluated on the basis of the following factors: past performance/past experience, corporate capability, technical capability, and level of effort/resource allocation. Under the technical capability factor, the offeror's overall program management approach and its approach to performing the requirements outlined in a sample task order were to be evaluated, while under the level of effort/resource allocation factor, the offeror's proposed price to perform the sample task was to be evaluated. Under the corporate capability factor, offerors were to describe their management and staffing plans. The solicitation instructed that the management plan was to include proof of organizational-level accreditation or certification and that the staffing plan was to include, at a minimum, the percentage of staff with third party certification and a statement of assurance that the offeror would maintain this percentage throughout the contract term.

The agency received and evaluated a number of proposals. The evaluation panel determined that EM&I (the protester) had relevant past performance/past experience and a Dun & Bradstreet (D&B) customer satisfaction rating in the second quintile,<sup>1</sup> but that its proposal was unacceptable due to two deficiencies under the corporate capability factor.<sup>2</sup>

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<sup>1</sup> The agency obtained past performance evaluations of the offerors from D&B. The solicitation included an attachment summarizing the D&B past performance rating service, which explained that a company's past performance score would be reported in two ways: as a raw score and as a quintile level ranking. A quintile level ranking shows how a company's score compares with the scores of other companies in the same industry. For example, a company whose score is among the top 20 percent of scores within its industry is considered to be in the top quintile.

<sup>2</sup> The evaluators rated proposals under the evaluation factors other than past performance in accordance with the following scale:

Unacceptable--Proposal includes a deficiency or many weaknesses to meet the performance objectives.

Acceptable--Proposal meets performance objectives, contains no deficiency but may contain a few weaknesses.

Outstanding--Proposal exceeds performance objectives with no deficiencies or weaknesses.

Technical Evaluation Panel (TEP) Report at 2.

The technical evaluation report identified the deficiencies in the protester's proposal as follows:

- (1) No proof of organizational-level accreditation was provided.
- (2) Vendor did not provide a percentage of staff with third party [certification], only provided the number of employees per certification but unable to determine a percentile since the total number of employees was not provided.

TEP Report at 10. In addition to the above deficiencies, the evaluation report identified a weakness in the protester's proposal under the technical capability factor, *i.e.*, that the protester's proposed work breakdown structure showed a lack of understanding of the requirements.<sup>3</sup> The report also indicated that the evaluators had not undertaken evaluation of the protester's proposal under the level of effort/resource allocation factor after determining that it contained the above deficiencies.

By letter dated February 4, 2009, the agency advised EM&I that it had selected six offerors other than the protester for award. The agency furnished the protester with a written debriefing on February 11. The debriefing letter explained that the proposals of the six offerors selected for award had all been rated as acceptable by the technical evaluation panel and that [deleted] of the six had D&B customer satisfaction ratings in the second quintile, [deleted] had a D&B customer satisfaction rating in the third quintile, and [deleted] had a D&B customer satisfaction rating in the fourth quintile. EM&I protested to our Office on February 17.

## DISCUSSION

The protester argues that the evaluators lacked a reasonable basis for finding its proposal unacceptable. EM&I asserts that, contrary to the evaluators' finding, it did submit proof of organizational-level accreditation with its proposal, and that the

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<sup>3</sup> In its report on the protest, the agency maintains that the evaluation panel identified another weakness in EM&I's proposal—the equivocal nature of its statement of assurance. (As noted above, the RFP called for a statement that the offeror would maintain the percentage of staff with third party certification throughout the contract term. In response to this requirement, EM&I stated in its proposal that it would “ensure that team members will strive to maintain the percentages of third party certifications identified in [the relevant table].” EM&I Proposal at 22.) While there is a reference to such a weakness on a technical evaluation summary worksheet, the evaluators did not identify the protester's statement of assurance as a weakness in the TEP report. Accordingly, it is not clear from the record before us what, if any, role this second weakness played in the TEP's evaluation.

evaluators' first finding of deficiency was therefore unjustified. The protester further argues that its failure to indicate the percentage of its staff with third party certification should not have been considered a deficiency. The protester maintains that but for these errors, its proposal would have been determined acceptable, and that a technical rating of acceptable would have placed its proposal, which received a better past performance rating than two of the six awardees' proposals, in line for award.

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 in accord with the evaluation factors set forth in the RFP. Fedcar Co., Ltd., B-310980 et al., Mar. 25, 2008, 2008 CPD ¶ 70 at 6. As explained below, we conclude that the evaluation of EM&I's proposal was unreasonable.

In its report on the protest, the agency acknowledged that it had erred in finding that the protester had failed to submit proof of organizational-level accreditation; accordingly, the agency withdrew this finding of deficiency. The agency maintained that EM&I's proposal nonetheless remained unacceptable due to the second deficiency, *i.e.*, the protester's failure to indicate the percentage of its staff with third party certification. The agency also argued that, even discounting that deficiency, EM&I's proposal would not have been in line for award in any event because it had two weaknesses in addition to the deficiency, whereas the proposals of the six awardees "exceeded the Department's requirements." Agency Report at 12.

Under the corporate capability factor, the RFP provided in relevant part as follows:

The Government will evaluate the Offeror's current quality business processes/certifications to be used in performing the functions outlined in the scope of services.

#### INSTRUCTION TO OFFERORS

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2. Offeror shall describe its staffing plan, in particular those with the education and experience to perform successfully the functions outlined in the scope of services. This should include, at a minimum, the following:
  - Percentage of its staff that have third party certification, such as Project Management Institute's Project Management Professional (PMI PMP®), CSPM-Certified Project Manager (CSPM), Certified Information Security Manager (CISM), Certified Information Systems Auditor(CISA), Certified Information System Security Professional (CISSP), Certified

Software Quality Engineer (CSQE), Certified Cost Estimator/Analyst (CCE/A), or other similar industry-recognized accreditation or certification.

- Statement of Assurance that the offeror shall maintain this percentage throughout the contract term.

RFP at 32.

EM&I responded to the above instruction by furnishing a table that identified the number of staff members employed by each member of its team who possessed each of 12 different types of professional certification. For example, the table indicated that [deleted] EM&I employees, [deleted] of its first subcontractor, and [deleted] of a [deleted] subcontractor held Project Management Professional certifications; that [deleted] EM&I [deleted] and [deleted] of the [deleted] subcontractor held Certified Information System Security Professional certifications; and that [deleted] of a [deleted] subcontractor held Certified Cost Estimator/Analyst certifications. The proposal did not indicate the overall percentage of proposed staff holding third party certification, however, nor did it furnish the evaluators with overall staffing numbers, leaving the evaluators without a basis for calculating the percentage themselves.

The protester argues, first, that the RFP did not require offerors to identify a percentage of staff members with third party certification; rather, the protester contends, the solicitation instructed offerors that their staffing plans should include a percentage of staff members with third party certification. The protester asserts that, according to the Federal Acquisition Regulation (FAR), “‘should’ means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance,” FAR § 2.101, which means that the course of action is not mandatory. Second, EM&I argues that the RFP instructed offerors to furnish a percentage “at a minimum,” and that it had exceeded the minimum by furnishing actual numbers of certified employees. The protester maintains that if, for example, an offeror had complied with the instruction by providing that 50 percent of its staff possessed certifications, the agency would be unable to determine whether the offeror was proposing five individuals with certifications out of ten total employees or 50 individuals with certifications out of 100 total employees; in addition, the agency would be unable to tell how many employees had each particular type of certification. The protester asserts that the information that it furnished in its table gave the evaluators a much more comprehensive understanding of the staff proposed and thus exceeded the minimum called for in the RFP.

We think that the protester's second argument—which the agency made no attempt to rebut—has merit.<sup>4</sup> Given that the RFP here contemplated the award of multiple ID/IQ contracts to perform as yet undefined tasks, the request for information regarding staff with third party certifications may only reasonably be interpreted as a request for information regarding certified staff members within the offeror's organization who would be available to work on task orders that the contractor might receive. While solicitation requirements are to be enforced as stated, in the unusual circumstances of this ID/IQ contract competition, we agree with the protester that the data in its table provided the evaluators with more, and more meaningful, information regarding its available staffing resources for future task orders than a mere percentage would have. We also note that it is not clear from the record before us how the agency evaluated the percentages, other than mechanically checking whether one was furnished. There is no indication in the record, for example, that a particular percentage was needed for a proposal to be deemed acceptable. In the absence of any evidence that the protester's furnishing of the actual number of its employees with certifications, as opposed to the percentage of its employees with certifications, resulted in the agency's being unable to determine the acceptability of its proposed staffing plan, we think that EM&I's furnishing of actual numbers may only reasonably be viewed as having met the agency's requirements for identifying offeror staff with third party certifications.

With regard to the agency's argument that EM&I's proposal would not have been in line for award even if the second finding of deficiency were withdrawn because the proposal also had two weaknesses, the record shows that the protester's proposal would have been rated acceptable but for the deficiencies, which, according to the debriefing letter, is the same rating that each of the proposals selected for award received.<sup>5</sup> To the extent that the agency is arguing that EM&I's proposal would not have been selected for award even if it had received the same overall technical rating as the other proposals because the evaluators identified strengths in those proposals, but none in the protester's—that is, the awardees' proposals were on the high end of the acceptable range, whereas the protester's proposal, even without the deficiencies, would not have been—the agency's argument ignores the fact that the RFP identified past performance/past experience as the most important evaluation factor and the protester received a better past performance rating than [deleted] of

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<sup>4</sup> Because we are sustaining the protest based on the protester's second argument, we need not address its first argument.

<sup>5</sup> As noted above, it is not clear from the record what, if any, role the second of the two weaknesses played in the TEP's evaluation of EM&I's proposal. In any event, even with the two weaknesses, it is clear that the proposal would meet the definition of "acceptable" used by the TEP, namely, that the "[p]roposal meets performance objectives, contains no deficiency but may contain a few weaknesses." TEP Report at 2.

the six awardees. Thus, at a minimum, the agency would have to consider EM&I's proposal as part of a price/technical tradeoff to determine the proposals offering the best value to the government. Accordingly, on the record here, we conclude that there is a reasonable possibility that the evaluation error resulted in competitive prejudice to EM&I, that is, but for the error, EM&I would have had a substantial chance of receiving an award. See TVI Corp., B-297849, Apr. 19, 2006, 2007 CPD ¶ 118 at 8.

Because we find that the agency's evaluation of EM&I's proposal was unreasonable, we sustain the protest. We recommend that the agency reevaluate EM&I's proposal; if, based upon the reevaluation, it determines that the protester's proposal represents "best value" under the RFP's criteria, we recommend that the agency make an award to EM&I, which might lead the agency to terminate one of the other contractors for the convenience of the government. We also recommend that the agency reimburse the protester the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2008). The protester's certified claim for costs, detailing the time spent and cost incurred, must be submitted to the agency within 60 days after receiving this decision.

The protest is sustained.

Daniel I. Gordon  
Acting General Counsel