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**Comptroller General
of the United States**

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

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Decision

Matter of: AIS Engineering, Inc.

File: B-406186

Date: March 7, 2012

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John E. Jensen, Esq., Daniel S. Herzfeld, Esq., Evan D. Wesser, Esq., and Nicole Y. Beeler, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Ultisat, Inc., the intervenor. Stephanie A. Kreis, Esq., and Brandon Porter, Esq., Department of Defense, for the agency.

Gary R. Allen, Esq., and Guy R. Pietrovito, Esq., Office the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester’s proposal was reasonably found to be unacceptable where it was evaluated as materially failing to satisfy stated performance and capability requirements.

DECISION

AIS Engineering, Inc., of Silver Spring, Maryland, protests the award of a contract to Ultisat, Inc., of Gaithersburg, Maryland, under request for proposals (RFP) No. HC1013-10-R-2005, issued by the Defense Information Systems Agency (DISA), Department of Defense (DoD), for a digital, internet protocol (IP)-based network that would connect various remote detection facilities, geophysical locations and service points with the Air Force Technical Applications Center (AFTAC).

We deny the protest in part and dismiss it in part.

BACKGROUND

AFTAC is the DoD agency responsible for monitoring nuclear treaty compliance. To this end, AFTAC has a network of sensors, known as the U.S. Atomic Energy Detection System Network, which consists of a worldwide network of geophysical

technologies deployed to detect, identify, and locate nuclear explosions.¹ RFP, attach. 1, Performance Work Statement (PWS), at 1.

DISA issued the RFP under the commercial item acquisition procedures of Federal Acquisition Regulation Part 12 for a digital, internet protocol-based network to support the U.S. Atomic Energy Network. The solicitation, which was issued as a small business set-aside, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a 150-day base period and 8 option years. RFP, attach. 4, § L.2, at 1. Detailed performance requirements were set forth in the PWS.

Offerors were advised that award would be made on a best value basis, considering the following factors: technical/management, past and present performance, and price. RFP, attach. 5, § M.3, at 3. The technical/management factor was stated to be comparatively equal to the past and present performance factor, and the non-price factors were stated to be, combined, significantly more important than price. Id. The following subfactors were identified under the technical/management factor: operational availability, network architecture and security, program management, and quality assurance surveillance plan. Offerors were informed that the subfactors were equal in importance. Id.

The RFP described in detail how proposals would be evaluated under each evaluation factor and subfactor. For example, offerors were informed that under the operational availability subfactor, the agency would evaluate an offeror's planned approach to providing communication services between service points on a continuous, 24 hours per day, 7 days per week basis. Id. The RFP also stated that the agency would evaluate an offeror's proposal to provide real-time network monitoring, maintain critical spare equipment, and minimize single points of failure. In this regard, offerors were required to discuss how they would maintain a monthly 99 percent availability rating for each service point; maintain a "data throughput delay" of less than 1,800 milliseconds;² maintain spares at critical service points; and operate and maintain real-time network monitoring capability. Id. at 4.

Also, as relevant here, offerors were informed that under the network architecture and security subfactor the agency would evaluate an offeror's approach to designing a communication network that addressed network requirements, performance

¹ The U.S. Atomic Energy Detection System uses a combination of satellite access circuits, frame relay network services, and multi-protocol label switching circuits to provide network connectivity. The current network has a 99 percent availability rate for each service point, and latency requirement of not more than 1,800 milliseconds for each service point. Contracting Officer's (CO) Statement at 1-2.

² This refers to the amount of allowable delay between service points.

standards, and network security and routing requirements. In this regard, evaluations would include an offeror's proposed system of network security, as required by Air Force Network Operations (AFNETOPS) policy and guidance. Id. at 4.

The RFP informed offerors that proposals would receive adjectival and risk ratings. Proposals would be rated as exceptional, acceptable, marginal, or unacceptable-- and low, moderate, or high risk--under the technical/management factors and subfactors.³ An offeror's past and present performance would receive ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. See RFP, attach. 5, § M.3, at 6-9.

The RFP also provided that the agency would evaluate the reasonableness and realism of proposed prices. In this regard, offerors were informed that the price evaluation would be based upon a total discounted life-cycle cost (DLCC), which would be based upon the offerors' proposed prices for a 108-month service period. Id. at 13-14.

DISA received proposals from AIS (the incumbent) and Ultisat. Both offers were included in the competitive range. The agency conducted five rounds of discussions with the offerors, issuing written evaluation notices (ENs) identifying deficiencies, uncertainties, weaknesses, significant weaknesses or adverse performance information in the respective proposals. Among other things, AIS was informed that its proposal was deficient under the network and security subfactor for failing to meet the security requirements of AFNETOPS. See, e.g., Agency Report (AR), Tab 5, AIS EN Nos. TM-029, 030, at 44-45, 46-48. In all, AIS received and responded to more than 100 ENs that addressed the technical/management, past and present performance, and price factors. See CO's Statement at 14; Agency Report (AR), Tab 5, AIS ENs.⁴

³ An "exceptional" rating reflected a proposal that exceeded specified requirements in a beneficial way, had one or more strengths, and no deficiencies. An "acceptable" rating reflected meeting minimum requirements with no deficiencies. A "marginal" rating reflected doubt that an aspect of a proposal would meet minimum performance or capability requirements, but that such uncertainty was correctable. An "unacceptable" rating reflected a proposal that failed to meet minimum performance or capability requirements, had one or more deficiencies, and was not "awardable." RFP, attach. 5, § M.3, at 6-7.

⁴ In the five rounds of discussions, Ultisat received and responded to four technical/management ENs, seven past and present performance ENs, eight price ENS, and eight contract ENs. CO's Statement at 14; AR, Tab 6, Ultisat ENs.

DISA concluded from its evaluation of the EN responses that AIS's and Ultisat's proposals were acceptable, although Ultisat had higher ratings under the operational availability and network architecture/security subfactors (exceptional as compared to AIS's acceptable ratings). Ultisat's evaluated DLCC of \$11,206,424 was lower than AIS's evaluated DLCC of \$11,787,415. See AR, Tab 12, Source Selection Briefing, at 29.

DISA requested final proposal revisions (FPRs) from both offerors, advising AIS and Ultisat of their proposal ratings. The offerors were specifically instructed that their FPRs should include any changes that occurred as a result of their responses to the ENs. DISA also advised the offerors that they could revise their proposals, but cautioned them against making any unsubstantiated changes.⁵ See AR, Tab 7, Letter to AIS Requesting FPR, July 26, 2011, at 3; Tab 8, Letter to Ultisat Requesting FPR, July 26, 2011, at 3.

FPRs were received and evaluated as follows:

		AIS	Ultisat
Technical/Management			
	Operational availability	Unacceptable/ Moderate risk	Exceptional/ Low risk
	Network architecture and security	Unacceptable/ Moderate risk	Exceptional/ Low risk
	Program management	Acceptable/ Low risk	Acceptable/ Low risk
	Quality assurance surveillance plan	Marginal/ Low risk	Acceptable/ Low risk
Past and present performance		Substantial Confidence	Substantial Confidence
Evaluated DLCC		\$13,352,962	\$11,206,415

AR, Tab 12, Source Selection Briefing at 29.

⁵ Prior to evaluating the firms' FPRs, the agency determined that it should obtain the firms' pricing for an in-scope item, the price of which the agency had previously planned to negotiate during the contract. Accordingly, the agency issued ENs, requesting prices for this item. Subsequently, the agency issued a new request for FPRs, again warning that the FPRs should include any changes provided in their EN responses, but not any unsubstantiated changes. AR, Tab 7, Letter to AIS Requesting FPR, Aug. 25, 2011 at 3; Tab 8, Letter to Ultisat Requesting FPR, Aug. 25, 2011, at 3.

After the evaluation of EN responses, AIS's proposal changed to acceptable overall. However, after the evaluation of its FPR, it was considered unacceptable. This reflected the evaluators' determination that AIS's FPR had a number of deficiencies, significant weaknesses, and an uncertainty under two technical approach subfactors.⁶ The evaluators noted that AIS's FPR did not include certain changes discussed in responses to ENs, and also contained unsubstantiated revisions. See AR, Tab 9, AIS Consensus Evaluation Report, at 1-4.

For example, the evaluators identified two deficiencies in AIS's FPR under the operational availability subfactor. One of these concerned the firm's failure to show that it would have spares at all critical service points to satisfy the requirement for continuous network operation. See id. at 1. The evaluators also identified two deficiencies and one uncertainty under the network architecture and security subfactor. Id. at 3. For one, the FPR did not offer defined active monitoring and prevention systems to satisfy the AFNETOPS guidance. For another, no assurance was provided that critical technology would not be released to unauthorized countries. Id. Although the protester had addressed and resolved the deficiencies in its responses to the agency's ENs, it did not include this information in its FPR.⁷

The source selection authority (SSA) was briefed with respect to the technical and price evaluations. AR, Tab12, Source Selection Briefing. The SSA accepted the evaluations of the firms' technical and price proposals and selected Ultisat's proposal for award. AR, Tab 11, Source Selection Decision Document (SSDD), at 38. This protest followed a debriefing.

⁶ The RFP defined a "deficiency" as a material failure of a proposal to meet requirements, or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful performance to an unacceptable level. "Uncertainty" was defined as doubt that an aspect of a proposal satisfied material performance or capability requirements. See RFP, attach. 5, § M.3, at 6.

⁷ See, e.g., AR, Tab 5, AIS EN and Response, EN No. TM-029, at 44-45. AIS's failure to include information from its EN responses in its FPR also led the evaluators to note an uncertainty under the network architecture and security subfactor. Specifically, AIS stated, in its EN responses, that it intended to provide a new technology that was not yet available, but described how it would perform if the new product continued to be unavailable. See id., EN No. TM-026 at 35-36. AIS's FPR, however, merely proposed the unavailable product with no contingency performance plan. AR, Tab 9, AIS Consensus Evaluation Report, at 3. The evaluators' assignment of a moderate risk rating under this factor noted this uncertainty as a weakness. Id. at 4.

DISCUSSION

Procurement Integrity Act

AIS protests that the agency violated the Procurement Integrity Act by improperly releasing a draft consensus report of AIS's evaluation on a publicly accessible agency website. Protest at 6.

The procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. §§ 2101-07, known as the Procurement Integrity Act, provide, in pertinent part, that federal officials, with respect to a federal agency procurement, may not knowingly disclose contractor bid or proposal information or source selection information before contract award. Both the Act and our Bid Protest Regulations require--as a condition precedent to our considering the matter--that a protester report the alleged violation of the Act to the contracting agency within 14 days of learning of the information or facts giving rise to the allegation. See 41 U.S.C. § 2106; 4 C.F.R. § 21.5(d) (2011).

Here, the protester's director of technology discovered the alleged disclosure in April 2011, during the first round of ENs, see Protest at 6,⁸ but AIS did not raise these issues with DISA within 14 days of learning of the basis of its allegation, as required by the Act and our Regulations. Accordingly, this allegation is untimely and cannot be considered.

Technical Evaluation

AIS generally objects to the evaluation of its and Ultisat's proposals. Among other things, AIS challenges the assignment of deficiencies and weaknesses in its technical proposal, and complains that the awardee's technical proposal was assigned strengths where AIS's proposal was not. See Protester's Comments at 8-15. As explained below, we find that DISA reasonably assigned deficiencies that rendered AIS's FPR unacceptable; therefore, we do not need to address all of the protester's challenges to the evaluation of proposals.

The evaluation of an offeror's proposal is a matter largely within the agency's discretion. Frontline Healthcare Workers Safety Found., Ltd., B-402380, Mar. 22, 2010, 2010 CPD ¶ 91 at 5. 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,

⁸ Although AIS claims that its management did not learn of the disclosure until just before the protest, the record shows that a responsible employee, its director of technology, learned the basis of this allegation on April 6, 2011.

2008 CPD ¶ 10 at 6. Our Office will not reevaluate proposals, but will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. Cylab Inc., B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Mere disagreement with the agency's evaluation is not sufficient to call an evaluation into question. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Here, DISA determined that AIS's proposal contained a number of deficiencies under two technical subfactors: (1) operational availability, and (2) network architecture and security. As noted above, a deficiency was defined by the RFP to be a material failure of a proposal to meet requirements that increased the risk of unsuccessful performance to an unacceptable level. See RFP, attach. 5, § M.3, at 6. Further, the RFP provided that a proposal with one or more deficiencies was unacceptable and would not be considered for award. See id. at 7.

For example, DISA assessed a deficiency under the network architecture and security subfactor because AIS's FPR failed to offer defined active monitoring and prevention systems that met AFNETOPS guidance. The agency also determined that AIS had not assured that critical technology would not be released to unauthorized countries. See AR, Tab 9, AIS Consensus Evaluation Report, at 3. As noted above, AIS was informed of these concerns in discussions and resolved them satisfactorily in response to the agency's ENs. See e.g., AR, Tab 5, AIS EN No. TM-029, at 44. However, AIS's FPR did not include these resolutions.

AIS contends that the agency should have considered its EN responses in evaluating its FPR. We find no merit to this argument. Here, offerors were specifically directed to include in their FPRs any changes or revisions to their offers that occurred as a result of their responses to ENs.⁹ Given that the offerors' FPRs could revise or supersede any aspect of a firm's prior offer, the agency reasonably relied upon the FPRs as the final proposal submission and controlling statement regarding how the offeror intended to perform. See WinStar Fed. Servs., B-284617 et al., May 17, 2000, 2000 CPD ¶ 92 at 8; see also Marylou's Transp. Serv., B-261695, Sept. 28, 1995, 95-2 CPD ¶ 154 at 3 (a best and final offer may revise or supersede any aspect of a prior proposal, and the offeror takes the risk that the changes may render a previously acceptable proposal unacceptable).

⁹ AIS argues that DISA treated the offerors disparately by crediting Ultisat for information it only provided in response to an EN. This allegation is not supported by the record. Specifically, AIS argues that DISA credited Ultisat's EN response to provide [Deleted]. Protester claims that Ultisat did not include this information in its FPR. See Protester's Comments at 10; Protester's Supp. Comments at 5. AIS is mistaken. Ultisat's FPR specifically provided for these features. See AR, Tab 8, Ultisat FPR, Solution Overview, at 3.

With respect to AIS's deficiency under the network architecture and security subfactor for failing to identify monitoring software, AIS argues that it advised DISA that it would only use software approved by AFTAC, and DISA should have been aware that AIS, as the incumbent, was currently using suitable monitoring software. Protester's Comments at 14-15. We disagree that AIS's acceptable past performance, or its promise of future performance, satisfied the protester's obligation to show a suitable technical approach in its proposal. It is an offeror's obligation to submit a proposal fully demonstrating that it intends to comply with the solicitation terms. C-Cubed Corp., B-272525, Oct. 21, 1996, 96-2 CPD ¶ 150 at 4. No matter how competent an offeror may be, the technical evaluation must be based on information included in the firm's proposal. ALOPS, B-404919, June 21, 2011, 2011 CPD ¶ 122 at 4.

We deny the protest in part and dismiss it in part.¹⁰

Lynn H. Gibson
General Counsel

¹⁰ AIS also challenges the agency's evaluation of Ultisat's DLCC and argues that DISA misled it during discussions to increase its proposed price. See Protest at 7-9. Given that AIS's proposal was reasonably found technically unacceptable and could not be considered for award, we need not address these issues.