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**Comptroller General
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Decision

Matter of: New Breed, Inc.

File: B-400554; B-400554.2; B-400554.3

Date: December 5, 2008

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Gary L. Rigney, Esq., for Taos Industries, Inc., an intervenor.

Johnny L. Littman, Esq., U.S. Marine Corps, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's and awardee's proposals is denied where record demonstrates that evaluation was reasonable and consistent with stated evaluation criteria.
 2. Protest that agency failed to hold meaningful discussions with protester is denied where record shows that discussions either were adequate to lead protester into areas of its proposal with which agency was concerned, or allegations concern minor weaknesses that agency was not required to discuss.
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DECISION

New Breed, Inc., of High Point, North Carolina, protests the award of a contract to Taos Industries, Inc., of Madison, Alabama, under request for proposals (RFP) No. M67004-07-R-0013, issued by the U.S. Marine Corps for a consolidated storage program. New Breed principally complains that the Corps improperly evaluated its technical proposal, as well as Taos's past performance and price, and improperly failed to provide New Breed with meaningful discussions.

We deny the protest.

The RFP called for a contractor to provide a consolidated storage program under which it would create and implement an enterprise-wide system to manage five equipment families of infantry combat equipment (ICE); chemical biological, radiological and nuclear defense equipment (CBRNDE); special training allowance

pool (STAP); soft walled shelters and camouflage netting; and other class II items for marines, sailors and designated civilians.

The RFP provided for the award of a fixed-price contract on a “best value” evaluation under the following factors: performance work statement (PWS) (with subfactors for facilities operation and program management support); performance capabilities (asset visibility, integration, and start up); corporate program management (management plan, quality control plan/risk mitigation plan, and corporate experience); past performance; small business participation; and price.¹ Price was to be evaluated for reasonableness, realism and balance. Initial offers were evaluated² and the results were presented to the SSAB, which established a competitive range of four that included the proposals of New Breed and Taos.³ The offerors whose proposals were in the competitive range participated in multiple rounds of written and oral discussions, provided an oral presentation to the technical evaluation board (TEB) and the chairman of the SSAB, and submitted final proposal revisions (FPR).

Following evaluation of the FPRs, Taos’s proposal was ranked first under the non-price factors, with ratings of exceptional for PWS and small business participation, and acceptable for performance capabilities, management, and past performance. Taos’s proposed price was \$133 million. Agency Report (AR) at 7. New Breed’s proposal was ranked fourth under the non-price factors, with ratings of acceptable for PWS and past performance, marginal for performance capabilities and management, and exceptional for small business participation. New Breed’s proposed price was \$152 million. *Id.* The agency determined that Taos’s proposal was the best value, and made award to that firm. This protest followed.

New Breed raises numerous challenges to the evaluation of its proposal under the non-price factors, and the evaluation of Taos’s past performance and price. In reviewing a protest against an agency’s proposal evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Phillips Med. Sys. Of N. Am.,

¹ The first three factors were approximately equal in weight, the fourth was more important than the fifth, and the fourth and fifth were significantly less important than the first three. Price was less important than the sum of the technical factors.

² Technical proposals were evaluated by a technical evaluation board (TEB), price proposals were evaluated by a price advisory team (PAT), and past performance was evaluated by the source selection advisory board (SSAB).

³ Proposals were to be assigned a rating of exceptional, acceptable, marginal, or unacceptable under each non-price factor, and could also receive the additional rating of neutral under the past performance factor.

B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. We have reviewed the record and find that New Breed's arguments are without merit. We discuss several of those arguments below.

PWS--TRANSPORTATION PLAN

New Breed asserts that the agency unreasonably assigned its proposal a weakness under the transportation plan subfactor (under the PWS factor) for offering [DELETED] for day-to-day operations. New Breed claims that the agency ignored its plan to [DELETED] to transport assets, and overlooked its proposal to [DELETED]. Protest at 22-23.

The evaluation in this area was reasonable. The agency reports that it did not require offerors to propose a specific number or type of vehicles to perform the contract but, rather, expected offerors to propose the number required to perform the contract based on their particular approach. Supplemental Agency Report (SAR) at 3. The agency found that New Breed's proposal [DELETED] to transport gear. While the agency concedes that this is acceptable in some circumstance—for example, when the agency directs inventory movement—it does not consider this reliance acceptable for the majority of the work to be performed—for example, where the contractor (not the agency) must decide to move inventory, or where the contractor centralizes repair and laundry services in a region and, as a result, must move inventory. *Id.* at 4. The agency found that [DELETED] vehicles would be insufficient because New Breed's proposed approach was a [DELETED] for [DELETED], which would require [DELETED] equipment, an operation for which eight vehicles currently are used. *Id.* The agency found that New Breed's plan [DELETED] would be acceptable, but was concerned that this approach could be problematic because there are constant unexpected operational demands that require transportation assets to be readily available.⁴ The agency's conclusions appear reasonable on their face, and while New Breed disagrees with the agency's judgment, it has not shown that the evaluation was unreasonable or inconsistent with the RFP.

PERFORMANCE CAPABILITY--START-UP

Under the start-up subfactor (under the performance capabilities factor) offerors were required to provide a transition plan to ensure a seamless provision of services from the incumbent to the awardee. RFP at 86, 94. The RFP further provided as follows:

⁴New Breed asserts that Taos also offered [DELETED], but was not downgraded for this. The record shows, however, that Taos proposed [DELETED] vehicles. Taos FPR.

...Based on the Government's preliminary planning, the transition period is anticipated to be approximately 150 calendar days. The successful offeror, in collaboration with the outgoing incumbents, is encouraged to accelerate the timeline to the greatest extent practical....

RFP, Statement of Operating Objectives (SOO), at 27.

New Breed's initial proposal was rated unacceptable under start-up because it offered a transition plan longer than 150 days. During discussions, the agency advised New Breed by e-mail that this was a significant weakness that should be addressed in the firm's FPR. AR at 19, E-mail to New Breed, Mar. 10, 2008. In its FPR, in response to the agency's concern, New Breed adjusted [DELETED]. However, its FPR also included a timeline showing a [DELETED]. Post Negotiation Business Clearance Memorandum (BCM) at 14. As a result, the agency did not change New Breed's unacceptable rating under the start-up subfactor.

New Breed maintains that the unacceptable rating resulted from an ambiguous solicitation, and therefore was unwarranted. In this regard, New Breed explains that, while the SOO requested a transition of approximately 150 days, it also included a timeline showing the complete transition taking place in 180 days. New Breed states that it thus interpreted the SOO to require full transition of the work within [DELETED]. New Breed asserts that its proposal met this target.

Regardless of whether the solicitation suggested that the overall transition could be completed within [DELETED], during discussions the agency specifically informed New Breed that its proposed schedule, which was [DELETED], was a significant weakness that needed to be addressed. It thus is disingenuous for New Breed to assert that it only included a proposal with a transition timeline [DELETED] because the RFP was confusing.⁵ Since New Breed's technical proposal [DELETED] a transition plan that would be completed in 150 days, there is no basis to conclude that the agency unreasonably evaluated the plan as unacceptable.

⁵ In any case, New Breed's assertion that the RFP was ambiguous is untimely, since both the requirement for the transition to be completed within approximately 150 days and the timeline allegedly indicating that the transition could be completed within 180 days were clear from the face of the RFP, but New Breed did not raise the issue until after the closing time for receipt of proposals. See Singleton Enters., B-298576, Oct. 30, 2006, 2006 CPD ¶ 157 at 5. Moreover, we consider New Breed's argument that it offered a transition plan [DELETED] as a result of an ambiguous solicitation somewhat suspect given that New Breed also argues in its protest that, in response to the March 10 e-mail, it informed the agency that it intended to [DELETED]. This statement indicates that New Breed was fully aware that the transition was to be completed in 150 days, and that New Breed merely failed to modify its technical proposal to comply with the requirement.

CORPORATE PROGRAM MANAGEMENT--MANAGEMENT PLAN

The RFP instructed offerors to identify key positions essential to the success of the contract, including their qualifications and other management positions deemed necessary. RFP at 87. New Breed's proposal named [DELETED] and [DELETED], and noted that the [DELETED] for the facilities within their regions. Proposal at 1-7. The agency assigned New Breed's proposal a significant weakness under the management plan subfactor (under the corporate program management factor) based on its proposal to have [DELETED]. The agency was concerned that since region I was in California and region III was in Okinawa, the geographic distance would create a significant risk that proper management oversight would not be provided. Similarly, the agency found management risk in the fact that the manager for [DELETED] MARFORRES equipment would be located in Barstow, California. Agency Report at 28.

New Breed maintains that the evaluation was unreasonable because, while its proposed [DELETED], it also proposed to provide a [DELETED] for each geographic location.

The evaluation in this area was reasonable. While New Breed's proposal indeed provided that each site would be staffed by a [DELETED] who would, in essence, [DELETED], it also provided that those [DELETED], and that the [DELETED] for the activities at the facilities. Proposal at 1-7, 1-12. Specifically, the proposal explained that the [DELETED] were [DELETED] activities of the regional staff in, among other things, warehousing and storage, laundry and repair, and inventory management, and in directing warehouses and storage sites, and coordinating transportation activities. Id. Given that the [DELETED] were [DELETED] under New Breed's proposal, we fail to see how the presence of [DELETED] renders the agency's concerns unreasonable. Rather, we think it clearly was reasonable for the agency to be concerned that [DELETED] to a [DELETED] manager could result in problems with respect to the [DELETED] availability and ability to effectively manage the facilities.

PAST PERFORMANCE

New Breed

The RFP required offerors to submit a list of relevant prior contracts and provided that the agency would evaluate past performance for demonstrated success in meeting project objectives of similar size and complexity. RFP at 96. New Breed, the incumbent contractor for one class of equipment (CBRNDE) that will be managed under the contract to be awarded, asserts that the Corps unreasonably

rated its past performance only acceptable, rather than exceptional.⁶ According to New Breed, the agency was pleased with its performance under its current contract, and since the RFP indicated that past performance in similar contexts would be most relevant, it should have received an exceptional rating.

This argument is without merit. The agency reports that the work required under the current solicitation is significantly more extensive than that under New Breed's incumbent contract—it covers three additional families of equipment, and requires more contact with individual users, and a significant laundry, repair and disposal effort, different from the protester's current contract. Other differences between New Breed's contract and the RFP include the cost structure, the greater number of facilities under the RFP (34 vs. 17), and the annual cost (\$24 million vs. \$10 million). Id. The agency also notes that no contractor, including New Breed, has any direct management experience. AR at 22-23. The agency concludes that, contrary to New Breed's position, its performance on the incumbent contract does not translate into past performance relevant in a meaningful way to this solicitation. We think the bases on which the agency distinguished the two contracts are reasonable. It follows that there is no basis for us to take issue with the agency's rating New Breed acceptable, rather than exceptional, for past performance based on relevance.

Taos

New Breed asserts that assigning Taos the same acceptable rating it assigned New Breed was unreasonable because it fails to account for Taos's lack of experience with inventory maintenance and the difference in the relative experience levels of the two firms with respect to direct customer service.

We find the evaluation unobjectionable. In this regard, the agency did not compare the offerors' past performance on different aspects of the solicitation. Rather, the agency evaluated each offeror's past performance based on relevance to the solicitation. The agency explains that Taos was rated acceptable based on its past performance of contracts of a type, scale, and dollar value similar to the RFP, and contracts demonstrating its ability in the areas of warehouse management, shelf life management, and operation of IT systems, all of which are relevant to the solicitation. While New Breed considers its own past performance more relevant, due to Taos's lesser experience with direct customer service and inventory maintenance, this is no more than disagreement with the agency's judgment that the considerations outlined above were sufficient to warrant an acceptable rating.

PRICE ANALYSIS

⁶ Prior to this procurement, each equipment family was managed separately by either the Corps or a contractor.

New Breed argues that the agency failed to perform an adequate price realism analysis. More specifically, New Breed complains that the agency analyzed uncertified cost and pricing data, which resulted in an inadequate analysis because the offerors did not use a uniform pricing format.

Where a fixed-price contract—including a fixed-rate contract such as the one here—is to be awarded, a solicitation may provide for a price realism analysis for such purposes as measuring an offeror’s understanding of the solicitation requirements and assessing the risk inherent in an offeror’s proposal. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The Federal Acquisition Regulation (FAR) identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including analysis of pricing information provided by the offeror. FAR § 15.404-1(b)(2). The nature and extent of a realism analysis ultimately are matters within the sound exercise of the agency’s discretion, which we will review only to determine whether it was reasonable and consistent with the solicitation requirements. Id.

Here, the agency compared offerors’ total prices and analyzed Taos’s cost data, estimates, and overhead rates and, on this basis, found that Taos’s price was realistic and consistent with its technical approach. SAR at 9; Response to Questions (Nov. 12, 2008), at 9. This approach was consistent with the above standard. Further, since the agency did not base its realism determination on a comparison of offerors’ rates, but instead analyzed each offeror’s cost and pricing information to ensure that it was consistent with the proposed technical approach, the fact that offerors did not use a uniform pricing format is of no import. In this regard, there is no requirement in the FAR that a price analysis performed to determine price realism be based on certified cost or pricing data or, more generally, on a uniform pricing format. See FAR § 15.404-1(b)(2). In the final analysis, while New Breed disagrees with the agency’s approach, it has pointed to nothing that provides a basis for questioning the price evaluation.

DISCUSSIONS

New Breed asserts that the agency failed to provide it with meaningful discussions regarding its technical proposal. In this regard, discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror’s potential for receiving award. Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. However, agencies satisfy this requirement where they lead offerors into the areas of their proposals that require amplification, Professional Perf. Dev. Group, Inc., B-279561.2 et al., July 6, 1998, 99-2 CPD ¶ 29 at 5; agencies are not required to afford offerors all

encompassing discussions or to discuss every aspect of a proposal that receives less than the maximum score, and are not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4. Agencies also need not afford offerors additional opportunities to cure a weakness that remains in its proposal after it was brought to the offeror's attention during previous discussions. Portfolio Disposition Mgmt. Group, LLC, B-293105.7, Nov. 12, 2004, 2004 CPD ¶ 232 at 2.

We find no basis to question the adequacy of the discussions provided to New Breed. For example, New Breed argues that the agency did not adequately raise its concern that New Breed's proposed [DELETED] was too [DELETED]. As discussed above, however, the agency advised New Breed by e-mail that its [DELETED], and was a significant weakness that should be addressed in New Breed's FPR. E-mail to New Breed, Mar. 10, 2008. New Breed also asserts that the agency did not adequately raise its concerns regarding the firm's quality control and risk management plan. During the oral discussions, however, the agency specifically advised New Breed that its risk management and quality control plans were weak. AR at 25. While New Breed believes the agency should have been more specific in identifying proposal weaknesses, the agency was only required to lead New Breed into the areas of its proposal that it considered weak. Professional Perf. Dev. Group, Inc., supra, at 5. The record shows that the agency met its obligation in this regard.

The protest is denied.

Gary L. Kepplinger
General Counsel