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## Decision

**Matter of:** Contracting, Consulting, Engineering, LLC

**File:** B-405732.4, B-405732.6, B-405732.7

**Date:** February 2, 2012

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David S. Black, Esq., Jacob W. Scott, Esq., and Oliya S. Zamaray, Esq., Holland & Knight, for the protester.

Richard J. Vacura, Esq., K. Alyse Latour, Esq., and Susan J. Borschel, Esq., Morrison Foerster, for DynCorp International LLC, an intervenor.

Kathleen D. Martin, Esq., Department of State, for the agency.

Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency unreasonably assigned protester a rating of marginal for senior program management is denied where proposed deputy program manager did not have the 5 years of aviation program management experience required by the solicitation.
  2. Protest that agency unreasonably determined that a rating of marginal eliminated protester from consideration for award is denied where solicitation specifically defined marginal rating as unacceptable.
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### DECISION

Contracting, Consulting, Engineering LLC (CCE), of Annapolis, Maryland, protests the Department of State's award of a contract to DynCorp International LLC, of Falls Church, Virginia, under request for proposals (RFP) No. SAQMMA11R0043, for aviation support services to assist the Columbia National Police Aviation Program in its counter-narcotics efforts. CCE asserts that the agency unreasonably and unequally evaluated proposals.

We deny the protest.

## BACKGROUND

The solicitation provided for award to the low priced, technically acceptable offeror, considering the following factors: (1) program management (with subfactors for management planning and staffing, personnel requirements, flexibility, quality assurance, contract data requirements list, senior program management staff/key personnel, and reporting); (2) technical capabilities, logistics and procurement (with subfactors for inventory control and property book, inspection station, continuous improvement, customer service, and freight forwarding); (3) technical capabilities maintenance; (4) quality control (with subfactors for audits and programs; quality standards; and, forms, records and publications); (5) information technology; (6) standardization and training (with subfactors for core processes, training and support services, standardization and training reports); (7) past performance; (8) subcontracting plan; and (9) price. RFP § M.9.

The RFP provided for adjectival ratings of acceptable, unacceptable or marginal for each technical subfactor and factor, except that ratings of no confidence, unknown confidence or confidence would be assigned to past performance and a pass or fail rating would be assigned to subcontracting plan. RFP § M.1. The solicitation further provided that “[a] rating of unacceptable for any subfactor will result in an overall factor rating of unacceptable,” and that “[a] factor rating of unacceptable may exclude an offeror from award or the competitive range.” RFP § M.4. The solicitation indicated that the agency intended to conduct the procurement without holding discussions. RFP § M.5.

Following the submission and evaluation of proposals, CCE was rated marginal for program management based on marginal ratings for the management planning and staffing, flexibility, and senior program management/key personnel subfactors; unacceptable for quality control based on ratings of unacceptable for the quality standards and forms, records and publications subfactors; and unacceptable for standardization and training based on a rating of unacceptable under the core processes subfactor. Although DynCorp’s price (\$165,063,483) was somewhat higher than CCE’s (\$162,979,769), DynCorp, unlike CCE, was rated acceptable for all subfactors and factors and as a result Dyncorp was awarded the contract. This protest followed.

## DISCUSSION

CCE challenges the evaluation of both its proposal and DynCorp’s, asserting that the evaluation was unreasonable and unequal.

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 RFP criteria and applicable procurement statutes and regulations. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Where a dispute exists as to the meaning of solicitation language,

we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149 at 5; CCITE/SC, B-400782, Nov. 21, 2008, 2008 CPD ¶ 216 at 3.

Here, we find the agency's evaluation to be reasonable and in accord with the terms of the solicitation. We discuss several of the protester's principal arguments below.

### Senior Program Management Staff/Key Personnel

Under the senior program management staff/key personnel subfactor of the program management factor, offerors were required to provide a resume for a program manager and a deputy program manager, showing that each had "at least five (5) years of experience in the area of program management in aviation programs," as well as showing that the program manager had at least 10 years and the deputy program manager at least 8 years of "professional Aviation managerial experience." RFP § M.9. CCE was rated marginal under this subfactor because the evaluators found that CCE's proposed deputy program manager did not have the requisite 5 years experience in program management. Agency Report (AR) at 25.

### CCE Management

CCE asserts that the solicitation did not require offerors to propose a deputy program manager with five years of experience as a program manager. Instead, according to CCE, there are certain sub-areas within the field of program management--e.g. maintenance, logistics, and quality control/quality assurance--and as long as the proposed deputy project manager listed experience in one of these sub-areas, it met the requirement for program management experience. CCE claims that since its proposed deputy program manager has over 5 years of experience in several of the sub-areas within the field of program management, he meets the requirements for 5 years of program management experience.

The agency responds that CCE is confusing the field of project management with that of program management. In this regard, the agency explains that program management is the management of multiple facets of an overall program, as opposed to project management which is management of a single facet of a project. See Declaration of Evaluation Chairman at 3-6.

We find CCE's interpretation of the requirement for experience in "program management in aviation programs" to be unreasonable when the solicitation is read as a whole and in a manner that gives effect to all provisions of the solicitation. Honeywell Regelsysteme GmbH, supra. In this regard, we agree with the agency that CCE's interpretation, that the "program management" requirement is met if you manage a facet of an overall program, would mean that the requirement essentially duplicates the broader solicitation requirement for "professional Aviation managerial experience," which appears to require only management of some aspect of an aviation function.

Further, we find that the agency reasonably determined that CCE's proposed deputy program manager did not have the requisite 5 years of program management experience. In this regard, CCE listed the deputy program manager's experience as a [REDACTED], which the agency reasonably viewed as not constituting management experience at all. Similarly, CCE listed experience as [REDACTED]. CCE Proposal at App. D; AR at 26. As discussed above, however, the agency reasonably viewed this experience as involving just one element of a program rather than as program management experience.

CCE asserts that even if its deputy program manager did not have the requisite years of program management experience, its proposal should not have been rated marginal. In this regard, CCE notes that the solicitation defined "marginal" as:

The proposal fails to satisfy some of the evaluation criteria. The proposal may have weaknesses that are considered significant. Although the weaknesses are considered significant, they are considered correctable. However, the identified weakness may present considerable risk to the Government. The proposal is not technically acceptable but may meet the requirement with revisions.

RFP § M.10.

CCE argues that since its proposed deputy project manager is currently the only full-time manager working under the extension to the incumbent contract, the agency cannot consider him a significant risk. The solicitation, however, specifically required a deputy program manager with 5 years experience in the area of aviation program management, while CCE's proposed project manager has only 3.5 years in aviation program management. CCE's proposal, therefore, did not simply contain a weakness, it failed to satisfy a specific requirement under the senior program management staff/key personnel subfactor in the solicitation. Accordingly, given the solicitation definition of marginal--including a "proposal [that] fails to satisfy some of the evaluation criteria"--the proposal was reasonably evaluated as marginal under this subfactor.

Finally, CCE asserts that only a proposal that was rated unacceptable was ineligible for award, and thus, its marginal rating did not disqualify it from consideration for award. The solicitation, however, indicated otherwise. The solicitation, which provided for award to the low priced, technically acceptable offeror, explained that a marginal rating meant "[t]he proposal is not technically acceptable but may meet the requirement with revisions." RFP § M.10. Thus, the solicitation specifically defined a marginal proposal as not acceptable. Since a marginal rating rendered the proposal unacceptable, the agency reasonably determined that CCE was not eligible to receive the award.

### DynCorp Management

CCE asserts that the agency unequally evaluated the proposals of CCE and DynCorp under the program management subfactor because DynCorp also proposed a program

manager and a deputy program manager who lacked the required 5 years of program management experience, but was not found to be marginal as a result. According to CCE, if CCE was ineligible for award, then so was DynCorp.

The program manager proposed by DynCorp was credited with, among other experience, 3.5 years of program management experience for his role as program manager for a fixed and rotary-wing aviation program in Bolivia. In addition, he was credited with 3 years of program management experience for his service at Fort Rucker, Alabama, first as a company commander and then as the chief of the cargo/fixed wing and standardization division at Fort Rucker, Alabama. In these roles, he commanded a unit undertaking helicopter training, and then led the evaluation of worldwide fixed and rotary-wing aviation training and the standardization programs to ensure flight safety across the Army. DynCorp Technical/Management Proposal at 32; Declaration of Evaluation Chairman at 3-6.

DynCorp's deputy program manager's 5 years of program management experience included 1 year as the program manager for the Columbia Operations/Nationalization Program, managing operations for the drug eradication program and the Plan Colombia Helicopter Program. It also included 3 years of experience as the Theater Aviations Operations Officer at Fort Sam Houston, Texas, where his duties included managing the U.S. Army North's support to homeland defense and civil authorities aviation anti-counter terrorism plans, serving as the officer in charge at New Orleans International Airport during Hurricane Katrina, and coordinating pre-deployment training for combat aviation brigades. Finally, the deputy program manager was credited with 1 year of program management experience for his role as an aviation company commander (UH-1H helicopters). Id.

We find no basis to question the agency's determination that the above experience for DynCorp's proposed program manager and deputy program manager satisfied the requirement for a minimum of 5 years of experience in the area of program management in aviation programs. In this regard, we note that the questioned positions were those which the program manager and deputy program manager held while serving in the military, while the evaluation was conducted by three retired military officers who, familiar with the responsibilities involved in each of these positions, determined that aviation program management was involved. CCE has not shown this determination to be unreasonable. For example, while CCE challenges the agency's consideration of the deputy program manager's experience as the Theater Aviations Operations Officer at Fort Sam Houston, we find that the agency could find that the breadth of his responsibilities--managing support to homeland defense and civil authorities aviation anti-counter terrorism plans, serving as the officer in charge at New Orleans International Airport during Hurricane Katrina, and coordinating pre-deployment training for combat aviation brigades--amounted to program management. Likewise, we find no reason to question the agency's judgment that the breadth of the responsibilities associated with serving as an aviation (helicopter) company commander, including managing people and helicopters in meeting the various responsibilities assigned to the

unit, qualified as overall aviation program management rather than something less, such as simply leading a particular project.

## Freight Forwarding and Procurement

CCE argues that DynCorp's proposal should have been evaluated as unacceptable under the freight forwarding subfactor of the technical capabilities, logistics and procurement factor, the past performance factor and the price factor. We have reviewed all of CCE's arguments and find that they are without merit. We discuss several below.

The solicitation provided that freight forwarding would be evaluated with respect to the offeror's:

demonstrated ability to establish a freight forwarding section that includes acceptable processes for expeditious shipping/receiving, minimize errors, minimizing damaged cargo, ensuring accuracy of documentation, and ensuring compliance with US, Colombian Customs and other governing regulations. These processes were required to include, but were not limited to, shipping and receiving times, shipment damages, custom delays for inaccurate documentation and reporting.

RFP § M at 7.

According to CCE, DynCorp should not have been rated acceptable for freight forwarding because it did not specifically address shipment damages and customs delays for inaccurate documentation. As noted by the agency, however, DynCorp did not elect to establish a freight forwarding section, but instead proposed to subcontract to an established freight forwarder. CCE has not shown to be unreasonable the agency's determination that by subcontracting the freight forwarding function to an established freight forwarder, DynCorp offered the agency a freight forwarding capability that was demonstrated to be expeditious and effective such as to warrant a favorable evaluation under this subfactor.

CCE also asserts that DynCorp's price proposal should have been rejected as unacceptable because DynCorp failed to price the required freight forwarding or procurement functions. With respect to pricing, offerors were required to complete seven pricing tables. As relevant, Table 5 included 9 line items. Contract Line Item Number (CLIN) 001 was a firm fixed price for program management; CLINs 002 through 008 listed labor categories and required offerors to propose a fixed rate for each category; and CLIN 009 was a fixed price of \$25,000,000 for materials. RFP, Table 5. According to CCE, DynCorp's price proposal should have been rejected because DynCorp did not provide a price for freight forwarding or procurement personnel. In this regard, CCE notes that DynCorp included a labor rate for procurement personnel, but did not include any personnel in the labor table or extended amount for procurement labor.

However, as noted by the agency, in its technical proposal DynCorp included procurement personnel, and it proposed to subcontract the freight forward function. DynCorp then included these costs in its price proposal as an indirect rate against the material costs in line item 009. Specifically, in its price proposal DynCorp stated with respect to its costs for the freight forwarding and procurement functions that the associated costs were accounted for in a 2.90% Material Handling Fee added as an indirect cost to the materials purchased against CLIN 009. DynCorp Price Proposal, vol. 4, section 4.3 at 70-71. Accordingly, DynCorp's proposal did include a price for freight forwarding and procurement functions.<sup>1</sup>

CCE asserts that the agency unreasonably evaluated its proposal for every subfactor where it received a rating less than acceptable, and that the agency unreasonably determined that its price proposal was unacceptable. However, since CCE was ineligible for award based on its rating for the senior program management staff/key personnel subfactor, even if CCE otherwise were rated acceptable, the same as DynCorp, for every other factor, CCE was not prejudiced by any other claimed error in the evaluation of its proposal. See Knoll, Inc.; Steelcase, Inc., B-294986.3, B-294986.4, Mar. 18, 2005, 2005 CPD ¶ 63 at 8 n.2.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>1</sup>In its comments in response to the agency report, CCE argues that it was improper for DynCorp to price these costs by applying an indirect rate to its material costs. CCE further asserts that DynCorp's proposal was unclear to the extent DynCorp states that it will charge for procurement by applying an indirect rate to material costs, but also included an hourly rate and no personnel in the line item for procurement personnel. These arguments are untimely since CCE did not raise them until December 28, more than 10 days after November 30, the date on which CCE received the documents that revealed DynCorp's pricing strategy. See 4 C.F.R. § 21.2(a)(2) (2011); L-3 Sys.Co. Wescam Sonoma, Inc., B-297323, Dec. 3, 2005, 2005 CPD ¶ 219 at 4.