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Decision

Matter of: Enterprise Solutions Realized, Inc.; Unissant, Inc.

File: B-409642; B-409642.2

Date: June 23, 2014

Lawrence P. Block, Esq., Stinson Leonard Street LLP, for Enterprise Solutions Realized, Inc.; and Christopher R. Shiple, Esq., for Unissant, Inc., the protesters. Cyrus E. Phillips IV, Esq., Albo & Oblon LLP, for Sevatec, Incorporated, the intervenor.

Barbara Walthers, Esq., Mark A. Allen, Esq., Beth Sturgess, Esq., and Eric Crane, Esq., Department of Homeland Security, for the agency. Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging the agency's evaluation of the protesters' proposals as technically unacceptable are denied where the agency reasonably concluded that the protesters' proposals failed to provide certifications and information for proposed key personnel, as required by the solicitation.

DECISION

Enterprise Solutions Realized, Inc. (ESR), of Columbia, Maryland, and Unissant, Inc., of Reston, Virginia, protest the issuance of a task order to Sevatec, Incorporated, under task order request for proposal (TORFP) No. HSSCCG-13-R-00026, by the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), for data and business intelligence support services. The protesters argue that the agency improperly found their proposals technically unacceptable and ineligible for award.

We deny the protests.

BACKGROUND

On July 17, 2013, DHS issued the TORFP to all contract holders under the National Institutes of Health's (NIH) CIO-SP3 small-business government-wide acquisition contract, which is an indefinite-delivery, indefinite-quantity (ID/IQ) contract, for data

and business intelligence services in support of the USCIS's Office of Information Technology, Data and Business Intelligence Section.¹ The TORFP anticipated the issuance of a cost-plus-fixed-fee completion task order for a base year, with two 1-year options. TORFP at 62, 67.²

The TORFP provided for award on a best-value basis, considering the following four factors: (1) technical approach; (2) management capability; (2) past performance; and (4) price. Id. at 93. The management capability factor included the evaluation of the following three subfactors: (1) program management approach; (2) staffing; and (3) key personnel. Id. For purposes of award, the technical approach factor and management capability factor were equal in importance; each factor also was individually more important than the past performance factor. Id. The subfactors under the management capability factor were equal in importance. Id. The technical approach factor, management capability factor, and past performance factor, when combined, were "significantly" more important than price. Id.

The solicitation included a detailed performance work statement (PWS) describing the services to be provided. Id. at 6-59. As relevant here, section 9.2 of the PWS included the following list of key personnel: (1) project manager; (2) subject matter expert (SME); (3) systems engineer (senior); (4) systems architect (senior); (5) functional analyst (senior); and (6) test engineer (senior). Id. at 36-38. The solicitation explained that key personnel "must be full-time for this project, except for SMEs who can be provided to the program on a temporary basis but are still designated as key personnel for the purposes of obtaining government approval prior to appointment." Id. at 89-90.

The TORFP advised that the agency would evaluate an offeror's key personnel statement of qualifications "based on the relevance of the individual's education and experience relative to (a) the mission, goals and objectives of [the] PWS; and (b) specific functions the individual will perform under the Task Order." Id. at 95. Specifically, the solicitation stated, in relevant part, the following:

Statement of qualifications must include any and all education and/or experience, and any certifications relevant to hardware/software, process and project management listed in Section 9.1 of the PWS.

Id.

¹ Although the solicitation anticipated the issuance of a task order under an ID/IQ contract, the evaluation record here refers to "offerors" and "proposals." For the sake of consistency, and because the distinction between a quotation and a proposal has no bearing on our analysis in this protest, we adopt the usage of the terms offerors and proposals in this decision.

² References to the TORFP are to the conformed copy provided by the agency.

As relevant here, the TORFP stated that the project manager must possess the following two certifications: Project Management Professional (PMP), and Information Technology Infrastructure Library (ITIL) Foundation. Id. at 33. With regard to the functional analyst, the TORFP required that an offeror demonstrate that the proposed individual has a minimum of five years experience (eight desired) gathering and documenting user's requirements, as well as a minimum of three years experience performing analysis on business intelligence systems (specifically Oracle Business Intelligence Enterprise Edition 10g or above). Id. at 35. With regard to the position of subject matter expert (SME) level II and level III, the solicitation required the proposed individual to have the following two certifications: (1) certification in at least one or more Oracle products listed in PWS, attachment 1; and (2) certification in at least one or more technologies within the technologies listed in PWS, attachment 1. Id. at 34.

DHS received proposals from six offerors, including ESR, Unissant, and Sevatec. Contracting Officer (CO) Statement (Unissant), at 3; CO Statement (ESR), at 5. DHS evaluated the offerors' proposals, and the results of DHS's evaluation of the protesters' and awardee's proposals were as follows:³

	ESR	UNISSANT	SEVATEC
Technical Approach	Acceptable	Outstanding	Good
Management Capability	Acceptable	Acceptable	-- ⁴
Program Mgmt Approach	Acceptable	Outstanding	Outstanding
Staffing Approach	Acceptable	Acceptable	Acceptable
Key Personnel	Unacceptable	Unacceptable	Outstanding
Past Performance	Low Risk/ Outstanding	Low Risk/ Outstanding	Low Risk/ Outstanding
Price ⁵	\$30M/\$35M	\$27.3M/\$32M	\$28.7M/\$33.7M

³ The technical evaluation team assessed the technical proposals as outstanding, good, acceptable, or unacceptable. AR, Tab 4, Evaluation Plan, at 9-10.

⁴ In providing the ratings of the unsuccessful offerors and awardee in the debriefing letters, the agency did not include the overall ratings for the management capability factor because, as discussed below, the agency relied upon the subfactor ratings in making its award decision. In addition, the record provided by the agency did not include the technical evaluation team's assessment of the awardee's proposal, and therefore, did not include the awardee's rolled-up rating for the management capability factor.

⁵ The prices listed include the government's probable cost both with and without the government's option under FAR clause 52.217-8 to extend services for 6 months.

AR, Tab 10, Source Selection Decision Document (SSDD) (ESR), at 1; Tab 11, SSDD (Unissant), at 1; ESR Protest, Exh. 1, Debrief Letter, at 1.

Evaluation of ESR

The technical evaluation team (TET) found ESR's proposal unacceptable under the key personnel subfactor, based on two deficiencies. AR, Tab 8, Technical Evaluation Report (ESR), at 29. The first deficiency was assigned because ESR's proposal failed to include a qualification statement for its proposed functional analyst. Id. The second deficiency was assigned because ESR's proposed subject matter experts did not possess the required certifications specified in the PWS. Id. Notwithstanding the unacceptable rating for this subfactor, the TET assigned ESR's proposal an overall acceptable rating for the management capability factor. Id. at 27.

Evaluation of Unissant

The TET rated Unissant's proposal unacceptable under the key personnel subfactor, based on one deficiency and one weakness. AR, Tab 9, Technical Evaluation Report (Unissant), at 40. The deficiency was assigned because Unissant's proposed subject matter expert did not possess the minimum required certifications. Id. With regard to the weakness, the qualifications listed for Unissant's proposed project manager were unclear because Unissant's proposal stated that the project manager was "PMP-trained and ITIL certified." AR, Tab 7A, Unissant's Technical Proposal, at 11-15. Notwithstanding the unacceptable rating for this subfactor, the TET assigned Unissant's proposal an overall acceptable rating for the management capability factor. AR, Tab 9, Technical Evaluation Report (Unissant), at 38.

Award Decision

The source selection official (SSO) stated that he agreed with the TET's evaluation and ratings under the key personnel subfactor, explaining: "The [TET] properly conducted the Management Capability evaluation at the subfactor level." AR, Tab 10, SSDD (ESR), at 2; Tab 11, SSDD (Unissant), at 2. The SSO disagreed, however, with the TET's conclusion that ESR's and Unissant's proposals were acceptable, overall, under the management capability factor. The SSO explained that, "[b]ecause the solicitation indicates the Management Capability factor evaluation would be done at the subfactor level, and because the [TET] provides supporting rationale only for the subfactor ratings and not for the factor rolled-up rating, . . . my decision here use[s] the subfactor level ratings and findings." Id. at 2, 4. Accordingly, the SSO concluded that ESR's and Unissant's proposals "are not eligible for award because of the unacceptable ratings in the Key Personnel subfactor under the Management Capability factor." Id. at 4. The selection official

stated that he considered opening discussions, but concluded that discussions were not needed for the government to obtain a best value offer. Id. at 2.

Ultimately, the agency selected Sevatec as the best value offeror, and on March 17, 2014, issued the task order to Sevatec. CO Statement (ESR), at 6. Both ESR and Unissant requested and received debriefings. Id.; CO Statement (Unissant), at 5. These protests followed.

DISCUSSION

Both ESR and Unissant challenge DHS's evaluation of their proposals as technically unacceptable and ineligible for award for failing to comply with the PWS requirements for key personnel.⁶ ESR and Unissant also challenge the selection decision, arguing that the selection official improperly concluded that ESR's and Unissant's proposals were unacceptable based on an unacceptable rating in a single subfactor. We have reviewed each of the protester's allegations and conclude, for the reasons discussed below, that DHS reasonably evaluated ESR's and Unissant's proposals technically unacceptable in the key personnel subfactor under the management capability factor, and therefore, ineligible for award.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not

⁶ ESR's initial protest also challenged other aspects of the agency's technical evaluation, and argued that the agency conducted an improper cost evaluation and flawed best value analysis. In responding to the agency report, however, the protester limited its comments to a single issue--whether the Agency reasonably determined that ESR's proposal was technically unacceptable due to ESR's alleged failure to show that its key personnel met the requirements of the solicitation. ESR Comments, at 1 ("ESR's comments on the Agency Report are limited to one issue."). Because ESR does not further pursue these issues in its comments responding to the agency report, we deem them abandoned. See International Mgmt. & Commc'ns Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 2-3 n.2. Similarly, while Unissant's initial protest also argued that the agency improperly failed to seek clarification of Unissant's proposal or hold discussions with the offerors, Unissant withdrew these arguments when it submitted its comments. Unissant's Comments, at 1 ("Unissant withdraws its claim that the Agency acted improperly when it declined to seek clarification and declined to enter into discussions with Unissant."). Accordingly, we will not address these issues.

have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Evaluation of the SME Certification Requirement

ESR and Unissant challenge the deficiency assessed to their respective proposals under the key personnel subfactor for failing to demonstrate that their proposed Level II/Level III SMEs possessed the required certifications. As discussed above, under the key personnel subfactor, the TORFP specified that an offeror's statement of qualifications for key personnel "must include any and all education and/or experience, and any certifications relevant to hardware/software, process and project management." TORFP at 95. The solicitation included SMEs in the list of personnel considered key, and for SME (Level II/III), required that the proposed individual have, as relevant here, the following two certifications: (1) certification in at least one or more Oracle products listed in PWS, attachment 1; and (2) certification in at least one or more technologies within the technologies listed in PWS, attachment 1. Id.

In evaluating ESR's proposal, the TET assessed a deficiency because two of ESR's five proposed SMEs did not meet the solicitation's certifications requirements. AR, Tab 8, Technical Evaluation Report (ESR), at 29 ("2 SMEs . . . do not possess certifications."). In evaluating Unissant's proposal, the TET similarly assessed a deficiency under the key personnel subfactor because one of Unissant's proposed SMEs did not meet the solicitation's certification requirements. AR, Tab 9, Technical Evaluation Report (Unissant), at 40 ("Proposed Oracle SME does not appear to possess any technical certifications.").

ESR and Unissant do not dispute that the proposed SMEs at issue did not meet the solicitation's certification requirements. See ESR Protest at 10; Unissant Comments at 7. The protesters contend, however, that the agency's evaluation was unreasonable because the certifications required by the solicitation for the SME (Level II/III) labor category, were not required by the underlying NIH CIO-SP3 ID/IQ contract. In this regard, the protesters assert that their proposed SMEs met the requirements for a SME as defined in the CIO-SP3 contract, which the protesters contend should have satisfied the requirements in the solicitation.

To the extent Unissant contends that the solicitation should not have included stricter requirements for SMEs than the underlying ID/IQ contract, this issue was apparent on the face of the solicitation, and therefore, this argument is untimely because it was not challenged prior to the time for submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014) (protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of

initial proposals shall be filed prior to the time set for receipt of initial proposals). On this record, we find nothing unreasonable about the agency's assessment of a deficiency for the failure of Unissant's proposal to comply with the solicitation's mandatory certification requirements.⁷

ESR argues, on the other hand, that the solicitation permitted offerors to propose labor categories other than those identified in the solicitation, and that the protester was therefore permitted to propose SMEs which did not include the certification requirements. In support of this argument, ESR relies on information provided by the agency in the question and answer (Q&A) portion of the solicitation, which stated: "The offeror is permitted to propose additional labor categories in the development of the offeror's technical approach, and permitted to map those labor categories as the offeror sees fit to the labor categories in its CIO SP3 schedule." TORFP at 5. ESR asserts that the two SMEs at issue were not proposed for the labor category SME (Level II/III), as defined in the PWS. Instead, ESR contends that it proposed these SMEs in different areas of expertise and mapped those labor categories back to the CIO-SP3 schedule in its price proposal, as permitted by the referenced Q&A. ESR Comments at 5.

We conclude that the agency reasonably assessed a deficiency to ESR's proposal here. As discussed above, the solicitation required that all personnel proposed within the labor category of SME (Level II/III) meet specific certification requirements. TORFP at 34. ESR's proposal demonstrates that ESR designated all five of its proposed SMEs (including the 2 SMEs at issue) within the same SME (Level II/III) labor category. AR, Tab 6b, ESR Business Proposal, Attach. 3, Exh. B. Accordingly, while the solicitation may have permitted offerors to propose labor categories in addition to those listed in the PWS, the record does not support the protester's contention that its proposal stated that the two proposed SMEs were offered for positions other than the labor category of SME (Level II/III)--and were therefore not subject to the solicitation's mandatory certifications requirements.

In addition, ESR argues that the agency's assessment of a deficiency was unreasonable because the solicitation required only one SME, and that ESR proposed five SMEs--three of which met the PWS requirements. See TORFP at 36. Accordingly, ESR contends that its proposal met the solicitation's minimum technical requirements even without the two non-compliant SMEs. In response, the agency asserts that it was reasonable to assess a deficiency based on the failure of

⁷ Unissant also contends that "having a certification is not a benchmark [criterion] for an individual's talents, expertise and capabilities to perform a job task." Unissant Protest at 3. To the extent the protester argues that the solicitation improperly required offerors to provide certifications to demonstrate the capabilities of proposed SMEs, this argument is also untimely because it was not raised prior to the time for submission of proposals. 4 C.F.R. § 21.2(a)(1).

ESR's proposed SMEs to meet the PWS's mandatory requirements for the labor category under which they were proposed, regardless of whether the protester proposed more SMEs than required by the solicitation.

The TORFP did not state that offerors were required to propose only one SME, as the protester contends. Rather, the solicitation stated that "[t]he Contractor shall ensure the project is staffed with an adequate number of assigned personnel possessing the required certifications, qualifications, skills and experience." TORFP at 38. In addition, the solicitation stated that SMEs "can be provided to the program on a temporary basis but are still designated as key personnel for the purposes of obtaining government approval prior to appointment." Id. at 36.

As discussed above, ESR's proposal designated all five of its proposed SMEs within the PWS's SME (Level II/III) labor category. Id. As also discussed above, the TORFP required that all personnel proposed within the labor category of SME (Level II/III) meet specific certification requirements. TORFP at 33-34. In evaluating ESR's proposed key personnel, the TET assessed a deficiency because two of ESR's proposed SMEs did not possess the certifications requirements required by the PWS. AR, Tab 8, Technical Evaluation Report (ESR), at 29. Based on this record, we find nothing unreasonable regarding the agency's assessment of a deficiency for the failure of ESR's proposal to comply with the solicitation's mandatory requirements. In essence, the agency reasonably assumed that ESR's technical approach relied on the use of five SMEs (Level II/III), but found that the protester had not proposed personnel with the required certifications to fill these positions. To the extent ESR contends that its proposal submission was adequate, the protester's disagreement with the agency's evaluation provides no basis to sustain the protest. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7 (mere disagreement with the agency's conclusions does not render the evaluation unreasonable).

Evaluation of ESR's Qualification Statement

Next, ESR challenges DHS's assessment of a deficiency to its proposal under the key personnel subfactor for failing to provide the required qualification statement for ESR's proposed functional analyst. See AR, Tab 8, Technical Evaluation Report (ESR) at 29 ("The Offeror omitted 'functional analyst' key personnel qualification statement."). As the contracting officer explains, without the qualification statement, the TET was unable to determine whether the functional analyst met the experience requirements set forth in the solicitation. CO Statement (ESR), at 5. Accordingly, the TET found ESR's proposal unacceptable under this subfactor. AR, Tab 8, Technical Evaluation Report (ESR), at 29.

ESR essentially concedes that its proposal did not include the required qualification statement for its proposed functional analyst as required by the solicitation. ESR Comments at 2-3 ("[T]his is truly a clerical error as the qualification statement for the

functional analyst . . . was included in prior drafts of ESR's proposal the day before ESR's proposal submission but was apparently inadvertently deleted when formatted for submission."'). The protester contends, however, that the omission of the qualification statement was a mere clerical error, and that the agency either should have excused the error, or had a duty to inquire about the clear clerical mistake. We disagree.

It is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 19. An offeror, including an incumbent contractor, must furnish, within its proposal, all the information that a solicitation requests regarding its capabilities to perform the contract. Wegco, Inc., B-405673.3, May 21, 2012, 2012 CPD ¶ 161 at 3.

ESR first contends that DHS should have known that the proposed functional analyst met the solicitation's experience requirements because the person proposed for the position is currently providing services to the agency, and the agency is aware of his qualifications. To the extent the protester asserts that the agency was required to consider this "close at hand" information in evaluating ESR's compliance with the solicitation's requirements, we disagree. In certain circumstances, when evaluating past performance, we have held that evaluators cannot ignore information of which they are personally aware, even if that information is not included in the offeror's proposal. See, e.g., Firestorm Wildland Fire Suppression, Inc., B-310136, Nov. 26, 2007, 2007 CPD ¶ 218 at 4. Here, however, the information that ESR argues is too close at hand for the agency to ignore--the qualifications of the proposed functional analyst--relates to an RFP requirement for technical acceptability in the key personnel subfactor under the management capability factor, not past performance. As noted above, an offeror's technical evaluation is dependent on the information furnished, and an offeror that fails to submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. Healthstar VA, PLLC, June 22, 2007, 2007 CPD ¶ 114 at 2. On this record, we find reasonable the agency's assessment of a deficiency for ESR's failure to include in its proposal the qualification statement for its proposed functional analyst as required by the solicitation.

Next, the protester argues that the agency had a duty to allow ESR to correct what the protester asserts was a minor clerical error regarding the qualifications of its proposed functional analyst. The agency responds that any exchange with ESR regarding this matter would have constituted discussions, not clarifications. As discussed above, the agency made award without discussions.

FAR § 15.306 describes a spectrum of exchanges that may take place between an agency and an offeror in negotiated procurements. Discussions occur when an agency enters into negotiations with offerors in a competitive range with the intent of allowing an offeror to revise its proposal. FAR § 15.306(d). Clarifications, on the other hand, are "limited exchanges" between the agency and offerors to clarify

certain aspects of proposals or to resolve minor or clerical errors. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 3; see also FAR § 15.306(a)(2). In this regard, we have held that clarifications may not be used to furnish information required to determine the technical acceptability of a proposal. eMind, B-289902, May 8, 2002, 2002 CPD ¶ 82 at 5; Evergreen Helicopters of Alaska, Inc., B-409327.3, Apr. 14, 2014, 2014 CPD ¶ 128 at 6-7.

Here, as the agency explains, the acceptability of an offeror's key personnel was based, in part, on information provided in the offeror's qualification statement. CO Statement (ESR), at 5. Without the qualification statement, the TET could not determine the acceptability of ESR's proposed functional analyst. Id. Accordingly, we disagree that the error was correctable through clarifications, and we find no basis to sustain the protest based on these arguments.

Evaluation of Unissant's Project Manager

Next, Unissant argues that DHS unreasonably assigned its proposal a weakness based on the conclusion that Unissant's proposed project manager did not meet the solicitation's mandatory certification requirement. As discussed above, the solicitation required that an offeror's proposed project manager possess a project management professional (PMP) certification and an information technology infrastructure library (ITIL) certification. TORFP at 36. In responding to this requirement, Unissant's proposal stated that its proposed project manager "is a professionally trained Program Management Professional (PMI-PMP) and ITIL foundations certified." AR, Tab 7A, Unissant's Technical Proposal, at 11-15.

The TET assessed a weakness to Unissant's proposal under the key personnel subfactor, stating that "[i]t is unclear whether the proposed PM possesses PMP certification or was just trained on PMP subjects." AR, Tab 9, Technical Evaluation Report, Unissant, at 40.

Unissant argues that DHS's assessment of a weakness was unreasonable because the protester's proposal described its proposed project manager's credentials in what the protester contends is an industry-standard format. Specifically, Unissant asserts that the designation "PMP" is used only with regard to individuals who both possess the pre-requisite educational background, and pass the requisite certification test. Unissant Comments at 8. Accordingly, Unissant contends that the agency should have understood that the statement in its proposal that its proposed project manager "is a professionally trained Program Management Professional (PMI-PMP)," demonstrated that the project manager possessed the requisite PMP certification.

We conclude that the record supports the reasonableness of the agency's evaluation. Unissant's proposal clearly stated that its proposed project manager is "ITIL foundations certified," but did not similarly specifically state that the proposed

project manager is PMP certified, or has passed the required exam. Instead, Unissant's proposal stated only that the proposed project manager is a "professionally trained [PMP]." AR, Tab 7A, Unissant's Technical Proposal, at 11-15. As the contracting officer explains, being PMP "trained" is not the same as having a PMP certification, which also requires passing an exam. CO Statement (Unissant), at 5. To the extent Unissant contends that its proposal submission was adequate, the protester's disagreement with the agency's evaluation provides no basis to sustain the protest.⁸ Ben-Mar Enters., Inc., *supra* (mere disagreement with the agency's conclusions does not render the evaluation unreasonable).

Source Selection Decision

Finally, ESR and Unissant challenge DHS's source selection decision, arguing that the SSO's conclusion that ESR's and Unissant's proposals were unacceptable because they received unacceptable ratings under a single subfactor improperly deviated from the evaluation rating definition of "unacceptable" in the agency's internal evaluation plan.⁹ The evaluation plan defined a rating of unacceptable, when applied to a proposal as a whole, as applicable to a proposal that is "so unacceptable in one or more areas that it would have to be significantly revised in order to attempt to make it other than unacceptable." AR, Tab 4, Evaluation Plan, at 10. We disagree.

⁸ Moreover, to the extent the protester claims that use of the term "PMP" in conjunction with an individual's name is so universally understood as to reflect PMP certification (in the manner that, for example, the term "MD" connotes "doctor"), the protester has failed to support such a contention.

⁹ Unissant also argues for the first time in its comments on the agency report that the SSO's evaluation deviated from the solicitation's stated evaluation criteria by relying on the subfactor ratings, instead of the factor ratings, in finding the protester's entire proposal unacceptable. Unissant knew from its debriefing, dated March 19, however, that its entire proposal was deemed unacceptable based on its rating under the key personnel subfactor. Unissant Protest, Exh. 3, at 1. Accordingly, because the information relied upon by Unissant for this argument was known by the protester at the time it filed its initial protest, this argument is untimely. 4 C.F.R. § 21.2(a)(2) (requiring that protest issues be presented within 10 days after the basis of protest is known or should have been known). In any event, the solicitation did not specify that the top-level factors must receive individual adjectival ratings, as asserted by Unissant. TORFP at 93-95. Rather, as relevant here, the solicitation's evaluation criteria for the management capability factor focused solely on the evaluation of the subfactors, stating: "The following subfactors of this factor will be evaluated to ascertain the Offeror's ability to manage the DBIS II services task order and meet USCIS requirements." *Id.* at 94.

As discussed above, both offerors received unacceptable ratings under the key personnel subfactor because some of the individuals proposed as key personnel did not meet the mandatory requirements specified in the PWS. As also discussed, ESR and Unissant concede that the individuals they proposed failed to meet the PWS's mandatory requirements. To make ESR's and Unissant's proposals other than unacceptable would require the offerors, at a minimum, to replace the non-compliant key personnel, which would involve revisions to both the technical proposals and business proposals, including revised labor rates. In light of such revisions, we do not find the SSO's rating of ESR's and Unissant's proposals as unacceptable at odds with the definition in the evaluation plan. Moreover, alleged deficiencies in the application of an agency's evaluation plan do not alone provide a basis for questioning the validity of an evaluation; such plans are internal agency instruction and do not give outside parties any rights. GBTI Solutions, Inc., B-409114.3, B-409114.5, Jan. 29, 2014, 2014 CPD ¶ 45 at 9 n.5. On this record, we find no basis to sustain the protests.

Moreover, a selection official has the discretion to make an independent assessment of offerors' proposals and to disagree with the judgments of lower-level evaluators, provided the selection official's assessments are otherwise reasonable. See KPMG Consulting LLP, B-290716, B290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 16-17. Here, the TORFP clearly stated that an offeror's proposal could be found unacceptable, overall, if found to be "so unacceptable in one or more areas that it would have to be significantly revised in order to attempt to make it other than unacceptable." AR, Tab 4, Evaluation Plan, at 10. The SSO's judgment that Unissant's and ESR's proposals were unacceptable, overall, based on the deficiencies and weaknesses in their respective proposals under the key personnel subfactor was therefore consistent with the solicitation's evaluation criteria.

The protests are denied.

Susan A. Poling
General Counsel