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**Comptroller General
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**United States Government Accountability Office
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Decision

Matter of: ORBIS Inc.

File: B-408033.2

Date: June 3, 2013

Kevin P. Mullen, Esq., and Charles L. Capito, Esq., Jenner & Block LLP, for the protester.

Terence Murphy, Esq., Patrick H. O'Donnell, Esq., and Karla J. Soloria, Esq, Kaufman & Canoles, P.C., for AMSEC, LLC, an intervenor.

James P. Winthrop, Esq., Department of the Navy, Naval Supply Systems Command, for the agency.

Pedro E. Briones, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of an agency's technical and past performance evaluations and source selection decision is denied where the agency reasonably evaluated proposals consistent with the solicitation's evaluation criteria.

DECISION

ORBIS, Inc., of Mount Pleasant, South Carolina, protests the award of a contract to AMSEC, LLC, of Virginia Beach, Virginia, under request for proposals (RFP) No. N00189-13-R-0005, issued by the Department of the Navy, Naval Supply Systems Command, for information management technology (IMT) support services. ORBIS challenges the agency's technical and past performance evaluations, and selection decision.

We deny the protest.

BACKGROUND

The RFP provided for the award of a fixed-price, indefinite-delivery indefinite-quantity contract for a base year and 2 option years for IMT services to support the Navy's Submarine Maintenance, Engineering, Planning, and Procurement (SUBMEPP) activity. RFP at 51; Amend. 2, Schedule. A detailed performance work statement (PWS), included with the solicitation, requires a number of tasks

and deliverables, including, among other things, that the contractor submit a plan for attaining contractor site defense information assurance certification and accreditation (C&A) within 90 days of contract award, and attain initial C&A within 270 days of award. See PWS at 11-12.

The solicitation stated that award would be made on a best value basis considering the following evaluation factors: technical approach, past performance, socio-economic plan, and price. RFP at 22-23. The technical approach factor included the following subfactors, listed in descending order of importance: performance approach, management approach, and transition plan. Id. Offerors were informed that the technical approach factor was more important than past performance, that the past performance factor was more important than the socio-economic factor, and that the non-price factors combined were approximately equal to the price factor. See id.

As relevant here, with respect to the performance approach subfactor under the technical approach factor, technical proposals were required to show the offerors' understanding of, and capability to meet, all PWS requirements. RFP Amend. 1 at 5. Offerors were also required to describe, among other things, any risks and mitigation actions associated with their proposed approach. Id. The RFP stated that the agency would evaluate the offeror's capability to meet all requirements, the feasibility and comprehensiveness of its performance approach, and its methods for problem identification and risk mitigation. RFP at 23. With respect to the management approach subfactor, offerors were required to submit management and staffing plans, and describe the offeror's available resources, including its surge capabilities. RFP Amend. 1 at 6. Offerors were also required to describe any risks and mitigation actions associated with their proposed management approach. Id. The RFP stated that the agency would evaluate offerors' capability to provide qualified personnel, as well as the offeror's proposed risk mitigation. RFP at 23.

Under the past performance factor, the RFP required offerors to identify up to three of their most relevant contracts within the past 5 years, and submit past performance questionnaires for each. RFP Amend. 1 at 6. Offerors were advised that the agency could obtain past performance information from other sources, including the contractor performance assessment reporting system (CPARS). RFP at 25. The RFP stated that the agency would evaluate the relative capability of each offeror to successfully meet the requirements, and assign adjectival confidence assessment ratings based on an evaluation of the quality of relevant past performance considering currency, the source of the information, and general performance trends, among other things. Id. at 24-25.

Under the socio-economic plan factor, the RFP stated that the agency would evaluate offerors' small business subcontracting participation based on the following criteria: (1) the extent to which small business concerns are specifically identified; (2) the extent of commitment to use small businesses; (3) the complexity and variety

of the work small businesses are to perform; (4) the realism of the proposal; (5) past performance compliance with relevant Federal Acquisition Regulation (FAR) small business requirements; and (6) the extent of small business participation in terms of total acquisition value. RFP at 25. Offerors were also advised that the contracting officer would review the apparent successful offeror's subcontracting plan, that the offeror shall negotiate an acceptable plan with the contracting officer prior to award, and that failure to negotiate an acceptable plan will make the offeror ineligible for award. Id.

The agency received proposals from five offerors, including ORBIS (the incumbent) and AMSEC, which were evaluated as follows:

		ORBIS	AMSEC
Price		\$19,514,595	\$19,991,419
Technical Approach		Acceptable	Outstanding
	Performance Approach	Acceptable	Outstanding
	Management Approach	Acceptable	Outstanding
	Transition Plan	Outstanding	Outstanding
Past Performance		Satisfactory Confidence	Substantial Confidence
Socio-Economic Plan		Acceptable	Acceptable
OVERALL RATING		ACCEPTABLE	OUTSTANDING

Agency Report (AR), Tab 14, Source Selection Decision Document (SSDD), at 4, 13-15, 18-22, 25.

A technical evaluation board (TEB) evaluated proposals under the technical approach factor and identified strengths, weaknesses, significant weaknesses, and deficiencies under the various subfactors. AR at 5-6; Tab 9, TEB Report at 1-3, 8-10. The agency found that ORBIS' proposal indicated an adequate approach to, and understanding of, the RFP requirements and the agency assessed a number of strengths in that regard. AR, Tab 14, SSDD, at 13-14. As relevant here, under the performance approach subfactor, the agency assessed as a significant weakness that ORBIS proposed to have [DELETED] share responsibility for preparing its C&A submission, and noted that C&A is a critical requirement that should be developed and executed by a dedicated team. Id. The agency also assessed as a weakness under that subfactor that ORBIS' proposal included numerous typographical errors and contradictory statements with regard to completion of a specified agency project. Id.

The agency's contracting officer, who was the source selection authority (SSA) for this procurement, evaluated offerors' past performance, socio-economic plans, and price proposals. AR¹ at 7-9. The agency found that ORBIS' past performance as the incumbent was very relevant to the requirement. Id. at 18. However, ORBIS' satisfactory confidence rating reflected the agency's assessment that ORBIS had not attained C&A under the current contract and that its quality of work in some cases was marginal, including several instances where deliverables did not meet requirements and rework was required.² See id. at 18-19.

The agency determined that AMSEC's technical superiority, higher past performance rating, and minimal price differential compared to ORBIS' price, provided the best value to the government. AR, Tab 14, SSDD at 25. Award was made to AMSEC and this protest followed.

DISCUSSION

ORBIS protests various aspects of the agency's evaluation of proposals, arguing that the agency assessed strengths and weaknesses in ORBIS' and AMSEC's proposals disparately under the non-price evaluation factors. Protester's Comments at 2. ORBIS contends that the agency ignored strengths in ORBIS' proposal with regard to its existing infrastructure as the incumbent, its staff and surge capabilities, and its experience with SUBMEPP and related agencies, among other things. Id. at 5-7. The protester also challenges the agency's assessment of a significant weakness with regard to ORBIS' defense information assurance certification and accreditation (C&A) plan and disputes the agency's view that ORBIS should have proposed a dedicated C&A team. Id. at 2-3. Moreover, the protester maintains that any clerical flaws in ORBIS' proposal are minor and do not provide a substantive basis to downgrade its proposal. Id. at 3-4.

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

¹ The Navy's agency report included a combined contracting officer's statement and legal memorandum.

² Under the socio-economic factor, the agency found ORBIS' and AMSEC's proposals acceptable under all six criteria. AR, Tab 13, Contracting Officer's (CO) Socio-Economic Plan Evaluation Rating Sheet.

Based on our review of the record, we find that the agency evaluated ORBIS' and AMSEC's proposals reasonably and consistent with the RFP's stated evaluation scheme. The protester here essentially seeks a mathematical or mechanical consideration of the number of strengths and weaknesses assessed against its and the awardee's proposals. However, our Office has repeatedly rejected such arguments. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 7 (rejecting protester's attempt to engage in a mathematical or mechanical comparison of the number of significant strengths in protester's and awardee's proposals); see also Nippo Corp., B-402363.2, May 5, 2010, 2010 CPD ¶ 112 at 5; Master Lock Co., LLC, B-309982.2, June 24, 2008, 2009 CPD ¶ 2 at 10; Medical Dev. Int'l, B-281484.2, Mar. 29, 1999, 99-1 CPD ¶ 68 at 9; Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 5. The essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. Stateside Assocs., Inc., B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8.

Contrary to the protester's arguments, the contemporaneous evaluation record shows that the agency did not ignore strengths in ORBIS' proposal, but reasonably assessed evaluation ratings based on the merits of the two proposals. The agency recognized, for example, that the incumbent's "intimate" understanding of the requirement, and of SUBMEPP's IMT systems and processes, provided strengths in several areas, including with regard to relationships with related agencies and activities, minimal transition time and effort, reduced risk of delay, quality management certification, and "virtually non-existent" transition risk. AR, Tab 14, SSDD, at 13-14. While ORBIS disputes the precise number of strengths assessed by the Navy, there is no legal requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. See Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9; see also Wackenhut Servs., Inc.; Stateside Assocs., Inc., supra.

To the extent that the protester challenges the agency's assessment of a significant weakness with regard to ORBIS' C&A plan, the protester has not shown that the agency's evaluation in that regard was unreasonable or inconsistent with the stated evaluation criteria. As discussed above, the RFP stated that the agency would evaluate an offeror's capability to meet all requirements, and the feasibility and comprehensiveness of its performance approach. RFP at 23. In this regard, the protester only disagrees with, but does not rebut, the agency's argument, see AR at 14, that proposing to use a contractor's [DELETED] to execute the C&A application increases the probability that the quality or timeliness of other PWS

requirements, such as software deliveries, will be negatively affected.³ The protester's disagreement does not establish that the evaluation was unreasonable. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Past Performance

ORBIS also challenges the agency's past performance evaluation, arguing that its proposal should have received the highest confidence rating because it has performed as the incumbent for these services. Protest at 12-13; Protester's Comments at 7. The protester also maintains that it should not be held accountable for its failure to attain C&A as the incumbent, because of alleged delays by the agency in reviewing ORBIS' prior C&A applications. See Protester's Comments at 8-10. Moreover, the protester contends that its past performance rating was based on a erroneous CPARS report from the agency. Id. at 8.

The evaluation of an offeror's past performance is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method for accommodating them, and we will not substitute our judgment for reasonably based past performance ratings. See MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. The evaluation of experience and past performance, by its very nature, is subjective, and an offeror's mere disagreement with an agency's evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

Here, too, the protester simply disagrees with its past performance rating, but has not shown that the agency's evaluation of ORBIS' past performance was unreasonable or inconsistent with the stated evaluation criteria. Significantly, ORBIS does not rebut, or address, the agency's assessment of weaknesses for several instances where deliverables did not meet requirements and rework was required under the incumbent contract. See Protester's Comments at 7-10; Protester's Supp.

³ We also find reasonable the agency's assessment of a weakness with regard to contradictory statements and typographical errors in the Orbis proposal--a matter which the protester essentially concedes. Protest at 10; Protester's Comments at 4. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See, e.g., International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7; see also SOURCECORP BPS Inc., B-406792, Aug. 24, 2012, 2012 CPD ¶ 250 at 9 (agency reasonably concluded typos and mistakes in protester's proposal, collectively, constituted a weakness).

Comments at 3. Nor does ORBIS rebut the agency's argument that the erroneous CPARS report was in fact corrected, and that in any event the evaluation error was not related to instances involving the quality of incumbent's performance. See id.; Supp. AR at 3. Finally, the protester does not rebut the agency's arguments that ORBIS had not delivered a suitable C&A application under the incumbent contract. AR, Tab15, Declaration of TEB Chairman, at 14-15.⁴

Best Value Determination.

Finally, ORBIS challenges the agency's selection decision, asserting that it was flawed because it was based on evaluations that, according to the protester's arguments described above, were unreasonable. As discussed above, there is no merit to ORBIS' objections to the agency's evaluation of proposals under the non-price evaluation factors. Thus, there is no basis to question the agency's source selection decision.

In sum, based on our review of the record, we conclude that ORBIS' various arguments challenging the agency's analysis and judgments reflect the protester's disagreement or dissatisfaction with the agency's determinations, and provide no basis to sustain the protest. See, e.g., Savannah River Alliance, LLC, B-311126 et al., Apr. 25, 2008, 2008 CPD ¶ 88 at 7 (protest of evaluation ratings based on protester's selective identification of, and disagreement with, evaluation assessments denied where detailed evaluation record shows that agency assessed ratings based on proposals' merits and fairly highlighted key discriminators in that regard).

The protest is denied.

Susan A. Poling
General Counsel

⁴ We disagree with the protester that the agency's evaluation of proposals under the socio-economic factor lacks sufficient documentation, Protester's Comments at 11-12. The record reflects that, consistent with the RFP, the agency reviewed proposals under the six stated criteria under that factor. See AR, Tab 13, CO's Socio-Economic Plan Evaluation Rating Sheet.