



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** Walsh Construction Company II, LLC

**File:** B-410015; B-410015.2; B-410015.3

**Date:** September 25, 2014

---

Joseph J. Dyer, Esq., Bennett D. Greenberg, Esq., and Caroline A. Keller, Esq., Seyfarth Shaw LLP, for the protester.

Devon E. Hewitt, Esq., and Jeffry R. Cook, Esq., Protoræ Law, PLLC, for J. Kokolakis Contracting, Inc., the intervenor.

Kyle E. Chadwick, Esq., and Scott N. Flesch, Esq., Department of the Army, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protest that agency misevaluated protester's proposal is denied where evaluation of proposal as unacceptable under mission capability factor was reasonable and consistent with evaluation criteria in solicitation, which required protester to demonstrate a capable and flexible approach to project execution within identified time and logistical constraints, and record shows that protester's proposal failed to provide required aspects of the approach.

2. Where solicitation provided that proposal had to be acceptable under each element in order to be acceptable under mission capability factor, and agency reasonably found protester's proposal unacceptable based on weaknesses under one of three elements, protester was not prejudiced by any evaluation errors under two other elements.

---

### DECISION

Walsh Construction Company II, LLC, of Chicago, Illinois, protests the award of a contract to J. Kokolakis Contracting, Inc., of Bohemia, New York, by the Department of the Army, Mission and Installation Contracting Command-West Point, under request for proposals (RFP) No. W911SD-14-R-0002 for construction services at the United States Military Academy (USMA), in West Point, New York. Walsh argues that the Army misevaluated the firm's proposal as unacceptable, and therefore unreasonably awarded the contract to Kokolakis at a higher price.

We deny the protest.

## BACKGROUND

The solicitation, issued on April 15, 2014, sought proposals to renovate and modernize the MacArthur Short Barracks at the USMA. Award of a fixed-price contract was to be made to the firm that submitted the lowest-priced, technically acceptable proposal.

The evaluation of proposals for acceptability was to be based on two factors: mission capability and past performance. The RFP identified three “elements” under the mission capability factor: project execution, key personnel/program management, and experience. No elements were identified under the past performance factor. The RFP defined an acceptable rating as being applicable to a proposal that “clearly meets the minimum requirements of the solicitation,” and informed offerors that “[i]n order to receive an acceptable rating, the Mission Capability submissions must meet all minimum requirements stated in each element.” RFP at 117 (emphasis added).

Since the project involves construction on the USMA campus, the contractor was to plan to perform the work to avoid disruption of academic and official functions. The Army also intends the contractor to provide a flexible and thorough plan to ensure the project would be completed in time for use of the barracks by mid-August 2015, while avoiding disruption of current USMA activities. Among other things, the RFP provided instructions for avoiding conflicts with units of marching cadets, parades, reviews, and academy ceremonies. RFP at 90. The specifications also identified days on which work on the project would not be allowed, such as home football games, exam weeks, and graduation. Agency Report (AR), Tab 13, Project Specifications, § 00 80 00 at 13-14. The contractor was directed not to perform “any physical work” on those days, except by permission of the contracting officer. Id. at 13. The specification of non-work days concluded with a requirement that the contractor’s schedule “must reflect the above anticipated ‘no work’ days.” Id. at 14. Finally, the RFP also identified “normal” project work hours as Monday through Saturday, 0700 to 1530 hours, but also noted that work outside those “will be approved under certain circumstances.” Id. at 13.

Under the project execution element, the RFP stated that the Army would evaluate the offeror’s proposed approach to completing the project. Id. In particular, the RFP stated that:

In order to meet this element’s minimum requirements, the offeror must demonstrate its capability to successfully execute the MacArthur Short Barracks Renovation and Modernization project within the contract’s completion date of 18 August 2015.

RFP at 116.

Offerors were required to propose a detailed schedule and supporting narrative:

Detailed narrative demonstrating the capability and flexibility to plan and schedule . . . in order to meet the proposed project completion date of 18 August 2015. The proposal must clearly identify potential constraints that may impact schedule (e.g., labor or material availability, permits, weather, traffic control, staging area, etc.). . . . Clearly show the anticipated non work dates/times as per the solicitation including drawings and specifications.

Id. at 105-06.

The Army received proposals from six offerors, including Kokolakis and Walsh. The evaluators found Kokolakis's proposal acceptable, but identified eight weaknesses in Walsh's proposal. AR, Tab 6, Consensus Evaluation Rating for Walsh, at 1-2; Tab 8, Source Selection Evaluation Board (SSEB) Report, at 6-7. The four weaknesses under project execution were a lack of flexibility or slip time in the schedule, lack of information about daily work hours and shifts, restating solicitation requirements without providing details, and failing to list and address schedule constraints. AR, Tab 8, SSEB Report, at 6. The SSEB found that Walsh's failure to provide the above required "critical information" demonstrated that the firm would be unable to plan and schedule the completion of the project in the time required. Id. Under key personnel/program management, the two weaknesses were for failing to show working relationships between personnel,<sup>1</sup> and identifying as key personnel two people who had roles on another project without explaining how this could work. Id. Finally, under experience, the two weaknesses were that Walsh's projects involving renovation of barracks were not sufficiently similar to the project here, and Walsh's experience did not contain any one project that was similar in both size and performance period. Id.

The source selection authority reviewed and adopted the evaluation findings, the results of which were as follows:

	<b>Walsh</b>	<b>Kokolakis</b>
<b>Mission Capability</b>	Unacceptable	Acceptable
<b>Past Performance</b>	Acceptable	Acceptable
<b>Price</b>	\$44.3 million	\$48.8 million

---

<sup>1</sup> The Army has acknowledged that this weakness was erroneous. AR at 7.

AR, Tab 9, Source Selection Decision Document, at 7.<sup>2</sup>

On June 19, the source selection authority reviewed the evaluation results and concluded that Kokolakis had submitted the lowest-priced, technically acceptable proposal. On June 20, award was made to Kokolakis. Following a debriefing, Walsh filed this protest with our Office, which Walsh supplemented twice.

## ANALYSIS

Walsh argues that the evaluation of its proposal as unacceptable was unreasonable. Its protests challenge each of the evaluated weaknesses. Our review of the record shows that the weaknesses assigned to the firm's proposal under the project execution evaluation criteria were reasonable and consistent with the evaluation criteria, and justify the evaluation of Walsh's proposal as unacceptable under the mission capability factor. To the extent that Walsh argues that weaknesses under other evaluation criteria were unreasonable, Walsh has not shown that it was prejudiced by those assessments.

Under the project execution element, Walsh argues that the Army has not identified any specific defect with its schedule that would render completion of the project impossible by the due date. With respect to the evaluated weaknesses for project execution, Walsh argues that it was not required to provide specific information about non-work days, shifts, working hours, or schedule constraints. Walsh argues that it should have been sufficient that its proposal had a schedule that used an identified critical path and took no exception to the requirements and, accordingly, that there were no constraints affecting its schedule to discuss. Walsh further argues that, to the extent that constraints needed to be addressed, a statement that its subcontractors understood the "uniqueness of the site, a university campus with pedestrian traffic and functioning facilities and patterns that construction cannot disrupt" should have sufficed to make its proposal acceptable. Protester's Comments at 15-16.

Ultimately, Walsh argues that its schedule should have been viewed as flexible and consistent with the specifications, so no additional detail was needed. Protest at 9. Even though it acknowledges that the RFP instructions called for specific information, Walsh argues that the details that were "called for by the Solicitation Instructions were not, however, minimum requirements that offerors were required to meet to be found acceptable." Protester's Comments at 5. Accordingly, Walsh argues that its proposal should have been found acceptable regardless of its

---

<sup>2</sup> A third offeror's proposal was also rated acceptable under both factors, but it was priced higher than Kokolakis. *Id.* at 15.

omission of information that the RFP instructed offerors to provide concerning non-work days, work hours, or schedule constraints. Id.

It is a well-established principle that offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. SNAP, Inc., B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor will we substitute our judgment for that of the agency; the evaluation of proposals is a matter within the agency's discretion. Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 6. The relevant question for our Office, in reviewing this subjective judgment, is whether the evaluation was reasonable and consistent with the solicitation. ASRC Research & Tech. Solutions, LLC, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 8. Our review of the record confirms the reasonableness of the assessment of weaknesses in Walsh's proposal under the project execution element, making it unacceptable.

As shown by the excerpts quoted above, the RFP clearly identified the Army's requirement that offerors demonstrate the capability and flexibility to complete the project on time. The RFP described the limitations presented by working at the USMA during academy operation, and the potential for offerors to request exceptions to some of these limitations. Ultimately, the RFP provided that the evaluation would assess each offeror's approach to timely completion of the project within those constraints.

The record shows that Walsh's proposal did not meaningfully address the constraints, did not expressly identify compliance with the non-work days, and did not explain an approach for working within and outside the "normal" hours set forth in the RFP. For example, although Walsh provided a detailed schedule, which identified days on which particular work elements would begin and end, those periods included numerous tasks that crossed non-work days (such as during December 2014 and May 2015 non-work days for exams and graduation), yet the schedule lacks any obvious indication that Walsh recognized the non-work days. However, the RFP directed offerors to "[c]learly show the anticipated non work dates/times as per the solicitation," RFP at 106, and provided for the evaluation to assess whether the offeror had demonstrated the capability to successfully perform the project by August 18, 2015. On this record, we have no basis to question the agency's conclusion that the omissions in Walsh's proposal rendered it unacceptable under the project execution element.

Since the record shows that Walsh's proposal failed to meet the criteria for acceptability under the project execution element--by not clearly demonstrating the firm's capability to successfully complete the project by August 18, 2015--its proposal did not clearly meet the minimum requirements of at least one of the mission capability elements. As a result, the Army properly rated Walsh's proposal

unacceptable under the mission capability factor as provided by the RFP evaluation criteria. RFP at 117 (“Mission Capability submissions must meet all minimum requirements stated in each element” to be rated acceptable overall).

Walsh also argues that it was evaluated unequally under the project execution element. In this regard, Walsh’s proposal was rated unacceptable when the firm did not state that it would work outside of normal hours.<sup>3</sup> In contrast, Kokolakis’s proposal was rated acceptable when its proposal stated that its approach assumed that the Army would agree to the use of two shifts, resulting in work outside of the normal hours, specifically the “second shift work [would be] limited to critical activities only.” Second Supplemental Protest at 7 (quoting AR, Tab 5, Excerpt of Kokolakis Proposal, at 3).

It is fundamental that the contracting agency must treat all offerors equally, and therefore it must evaluate offers evenhandedly against common requirements and evaluation criteria. Tidewater Homes Realty, Inc., B-274689, Dec. 26, 1996, 96-2 CPD ¶ 241 at 3. Here, however, Walsh has not shown that it was treated unequally in comparison to Kokolakis. In particular, the RFP provided that work outside of the specified normal work hours “will be approved under certain circumstances.” AR, Tab 13, Project Specifications, § 00 80 00 at 13. Since the RFP expressly allowed offerors to seek approval to perform work outside of the normal hours, we see no basis to question the Army’s evaluation of Kokolakis’s proposal as acceptable when it did so.<sup>4</sup>

In contrast, the Army concluded that Walsh’s proposal to work only within normal working hours failed to provide a sufficient plan to ensure completion of the scope of work by the required date in light of the complexity of the project, and the requirement for the contractor to demonstrate flexibility. Cf. RFP at 105-06. Walsh has not shown that the Army’s concern over the adequacy of Walsh’s approach to ensuring timely completion of the project was equivalent to the Army’s evaluation of Kokolakis’s proposal as acceptable for expressly indicating that its approach included performance of work outside of normal work hours. Since Walsh has failed to show unequal treatment, we deny this ground of protest.

Finally, as noted above, Walsh also challenges the assessment of several additional weaknesses in its proposal under other mission capability elements. E.g., Protest at 11-12; Second Supplemental Protest at 5-6. We need not reach these issues. As

---

<sup>3</sup> During the protest, Walsh stated that it “did not show multiple shifts because it did not plan any.” Protester’s Comments at 13.

<sup>4</sup> To the extent that Walsh argues that the lack of direction in the RFP about what circumstances would be sufficient to approve work outside of normal hours thereby implied that approval would not be freely granted, the ambiguity was patent, so any challenge to the terms of the RFP is untimely now. 4 C.F.R. § 21.2(a)(1) (2014).

set forth above, the RFP advised that to receive an acceptable rating a proposal must meet all the minimum requirements in each element. Walsh's proposal failed to meet minimum requirements under the project execution element, so the proposal was properly rated unacceptable under the mission capability factor. As a result, Walsh cannot claim to have been prejudiced by any errors in the evaluation of its proposal under the other mission capability elements.<sup>5</sup> Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.

The protest is denied.

Susan A. Poling  
General Counsel

---

<sup>5</sup> For the same reason, we need not address Walsh's argument that its experience was as similar to this project as was Kokolakis's experience.