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## Decision

**Matter of:** Avaya Government Solutions, Inc.

**File:** B-410387

**Date:** December 15, 2014

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J. Dale Gipson, Esq., Tracy A. Marion, Esq., and Corey W. Jenkins, Esq., Lanier Ford Shaver & Payne PC, for the protester.  
Karen R. Harbaugh, Esq., and Robert E. Gregg, Esq., Squire Patton Boggs-US, LLP, for Pragmatics, the intervenor.  
Robert J. McMullen, Esq., Department of the Navy, for the agency.  
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that agency introduced unstated evaluation criteria is denied where agency's evaluation was reasonable and consistent with the terms of the solicitation.

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### DECISION

Avaya Government Solutions, Inc., of Fairfax, Virginia, protests the award of a contract to Pragmatics, Inc., of Reston, Virginia, under solicitation No. N00189-14-R-Z017, issued by the Department of the Navy for litigation support services concerning the Navy Claims Defense of the Iranian Foreign Military Sales Program. Avaya alleges that the agency introduced unstated criteria in its evaluation of Avaya's proposal.

We deny the protest.

### BACKGROUND

The Navy issued the solicitation on January 23, 2014, in order to award a fixed-price contract for litigation support services for one base-year and six one-year option periods. The solicitation is a follow-on to an ongoing contract for which Avaya, the protester, is the incumbent. Pragmatics, the awardee, is an Avaya subcontractor under the incumbent effort.

The solicitation provided that the award would be made on a best-value basis considering four non-price factors and price. Agency Report (AR), Tab 1A-2, Solicitation Amendment 0002, at 8. The solicitation established that the non-price factors were more important than price. The non-price factors consisted of: performance approach, corporate experience, past performance, and socio-economic plan. Id. Among the non-price factors, performance approach was the most important, followed by corporate experience and past performance which were equal in importance, and socio-economic plan which was least important. Id.

As relevant to the protest, regarding the performance approach factor, offerors were required to provide, in detail, the following:

An overview of the offeror's start-up plans, including transition of personnel (e.g., length of time and plan to fill each position)[;] a detailed description of the offeror's proposed labor categories with the quantity of FTEs (full time equivalent) and the qualifications associated with each category[;] the offeror's plan for recruiting and retaining personnel with the necessary skill sets to accomplish the PWS requirements, including the offeror's plan for obtaining the necessary security clearances[;] . . . [and] an overview of the offeror's risk mitigation plan to identify risks associated with the solicitation.

Id. at 5-6.

The Navy received three proposals in response to the solicitation, including those submitted by Avaya and Pragmatics. After an initial evaluation, the Navy established a competitive range limited to the proposals of Avaya and Pragmatics, and conducted discussions with these offerors. After discussions, the proposals were rated as follows:

	Avaya	Pragmatics
Performance Approach	Acceptable	Good
Corporate Experience	Outstanding	Acceptable
Past Performance	Satisfactory	Satisfactory
Socio-Economic Plan	Acceptable	Acceptable
Overall	Good	Good
Price	\$34,816,505.80	\$36,815,548.30

AR, Tab 14, Technical Evaluation Board (TEB) Report, at 9; Tab 15, Source Selection Decision (SSD), at 3.

Although both proposals were rated good overall, the TEB and source selection authority (SSA) agreed that Pragmatics' proposal was the highest-rated. In this regard, the TEB and SAA concluded that "Pragmatics' proposal is ranked first because its proposal is superior in the most important non-price factor, and because its proposal presents lower performance risk than the proposal of Avaya considering all evaluation factors." AR, Tab 14, TEB Report, at 9.

Concerning the most important non-price factor, performance approach, the TEB explained that a significant difference existed between the proposals with regard to staffing approach, particularly concerning start-up/transition of personnel. Id. In this area, Pragmatics' proposal provided commitments from every member of its proposed team to be in place on day one of performance. Id. at 6. The TEB noted that Pragmatics and its subcontractors currently employed, and had proposed, [DELETED]. Id. While Pragmatics also proposed [DELETED], the TEB concluded that there was "virtually no risk" in Pragmatics' staffing approach and transition of personnel because Pragmatics' proposal included a full staff of qualified personnel for the performance start date, without regard to [DELETED]. Id. Accordingly, the Navy rated Pragmatics proposal as good under the most important performance approach factor. Id. at 7.

In contrast, the SSA and TEB concluded that Avaya's proposal contained commitments from only [DELETED] personnel out of the [DELETED] FTEs proposed for its team. Id. at 3. The TEB noted that for the remaining [DELETED] FTEs of personnel, Avaya proposed to [DELETED]. Id. In the event that [DELETED] was not successful, Avaya proposed [DELETED] to fill the remaining FTEs. Id. While Avaya's proposal claimed that [DELETED], Avaya acknowledged that [DELETED]. Id. at 4. Ultimately, the TEB concluded that while Avaya's proposal provided various assurances that it would have a fully qualified staff in place at the performance start date, Avaya could only guarantee [DELETED] employees, and would be required to transition or replace personnel in technically critical positions prior to the start of performance. Id. The TEB determined that some risk existed with respect to Avaya's plan to obtain qualified personnel to fulfill the remaining [DELETED] FTEs by the start date for performance. Id. The Navy therefore rated Avaya's proposal as acceptable under the performance approach factor. Id. at 5.

In the source selection analysis, the SSA specifically noted that Avaya's staffing plan was based on [DELETED], and relied on [DELETED] as a back-up plan for obtaining personnel in the event that [DELETED]. AR, Tab 15, SSD, at 2. In comparison, the Pragmatics proposal contained commitments from all of its proposed personnel, and required the transition of only [DELETED]. Id. In the final analysis, the SSA concluded that:

While the Avaya performance approach was evaluated in its best light and concluded to be acceptable, they have presented a weaker plan than Pragmatics[,] with only a hope that they can [DELETED]. [. . .] The difference between the non-price proposals, especially in the area of immediate start-up and [DELETED] is too high. The contracting office has considered all of the differences in the non-price proposals and determined that it is worth paying the \$2 million more to Pragmatics, especially when considering that offerors were advised that the non-price proposals would be considered to be more important than the price proposals.

Id. at 5.

On September 2, 2014, the Navy informed Avaya that it was not the successful offeror. Avaya then requested a debriefing, which the Navy delivered on September 8. This protest followed.

## DISCUSSION

Avaya asserts one ground of protest--that the Navy applied unstated evaluation criteria concerning the offerors' staffing plans/transition of personnel.<sup>1</sup> Specifically, Avaya challenges the Navy's concerns that Avaya's proposal guaranteed only [DELETED] qualified individuals, and could not guarantee performance by the incumbent subject matter experts or the counterclaim team. Avaya contends that these conclusions were premised on unstated evaluation criteria, because the solicitation did not require offerors to provide commitments from all personnel, define critical subject matter experts, or require incumbent personnel to remain in place. Avaya contends that the solicitation required only that the contractor provide a minimum of 36 FTEs in support of the effort, and that the Navy's assignment of risk was improper.

In reviewing challenges to the agency's evaluation of proposals, we do not reevaluate proposals, but, rather, review the agency's evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Philips Med. Sys. N. Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. Our review of the record shows that the Navy evaluated the proposals in accordance with the solicitation's performance approach factor, under which offerors were required to provide an overview of their start-up

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<sup>1</sup> Initially, Avaya's protest also alleged that the Navy conducted an unequal evaluation and failed to adequately document its source selection decision. Avaya withdrew these grounds of protest subsequent to its review of the agency's report. Avaya Comments, at 2.

plans including transition of personnel, and plan for recruiting and retaining personnel with the necessary skill sets to accomplish the PWS requirements.

Avaya is correct that the statement of work in this solicitation required offerors to provide a minimum of 36 FTEs, and that Avaya's proposal met this requirement by proposing a team comprised of [DELETED] FTEs, and a plan to have personnel to staff the team in place by the start date. However, where, as here, a solicitation indicates the relative weights of evaluation factors, as opposed to providing for selection of the lowest-priced, technically acceptable proposal, the agency is not limited to determining whether a proposal is merely technically acceptable; rather, proposals may be evaluated to distinguish their relative quality by considering the degree to which they exceed the minimum requirements or will better satisfy the agency's needs. IAP World Servs., Inc., B-297084, Nov. 1, 2005, 2005 CPD ¶ 199 at 4.

In this case, the Navy concluded that Avaya's performance approach, including its proposed staffing plan and plan for start-up and transition of personnel, was acceptable. However, the Navy did not assign Avaya a rating higher than acceptable due to the fact that Avaya's proposal contained commitments from only [DELETED] personnel, and required Avaya to transition or replace personnel in critical positions prior to the start date for performance. This caused the Navy to perceive some risk with regard to Avaya's ability to obtain an additional [DELETED] FTEs of qualified personnel by the contract start date, considering that Avaya's plan required [DELETED].

We conclude that the agency's evaluation here was well within the stated performance approach evaluation criteria, under which offerors were required to outline "start-up plans, including transition of personnel . . . [and] the offeror's plan for recruiting and retaining personnel with the necessary skill sets to accomplish the PWS requirements." AR, Tab 1A-2, Solicitation Amendment 0002, at 5-6. Additionally, we see no error in the agency's evaluation of risk in Avaya's approach. Evaluating the risk associated with an offeror's proposed approach is generally appropriate, whether or not risk is specifically stated as an evaluation factor, because consideration of risk is inherent in the evaluation of technical proposals. See, e.g., Communications Int'l, Inc., B-246076, Feb. 18, 1992, 92-1 CPD ¶ 194 at 6

In sum, we see no evidence that the agency applied unstated evaluation criteria requiring commitments from all personnel required to staff the contract, or requiring retention of incumbent personnel. Rather, the record demonstrates that the Navy reasonably concluded, consistent with the terms of the solicitation, that Avaya's

performance approach, while acceptable, presented risk related to its [DELETED] unfilled FTEs of technically critical personnel, and that its proposal did not represent the best value to the government.

The protest is denied.

Susan A. Poling  
General Counsel