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# Decision

**Matter of:** InGenesis, Inc.

**File:** B-412967.3; B-412967.4

**Date:** September 26, 2017

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## DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and its exclusion from the competitive range is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria, and where the agency reasonably determined that the protester's proposal was not among the most highly rated.

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## DECISION

InGenesis, Inc., of San Antonio, Texas, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. HSCEDM-16-R-00002, issued by the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE) for on-site medical staffing services, including medical, dental, and mental health care to ICE detainees. InGenesis challenges the agency's evaluation of its proposal and the exclusion of its proposal from the competitive range.

We deny the protest.

## BACKGROUND

The RFP, issued on March 24, 2016, contemplated award of a labor-hour, time-and-materials contract using Federal Acquisition Regulation (FAR) parts 12 and 15 procedures for source selection. Agency Report (AR), Tab 2, RFP at 1. Award would

be made using a best-value tradeoff approach, based on the evaluation of the following factors, listed in descending order of importance: (1) technical approach; (2) management approach; (3) corporate experience/past performance; (4) administration<sup>1</sup>; and (5) price. RFP, amend. 15, at 127-129. All evaluation factors other than price, when combined, were significantly more important than price. Id. at 129.

The technical approach and management approach factors were to be assigned the following ratings: excellent, good, acceptable, marginal, and unacceptable.<sup>2</sup> Id. at 132. The corporate experience/past performance factor utilized the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 133. Subfactors within the non-price evaluation factors were not separately rated, except for the administration factor, for which subfactors would be rated on the basis of pass, fail, or not applicable (N/A). Id. at 131. Regarding the evaluation of proposals, the RFP specifically advised:

A major item and/or gross omission which precludes meeting program objectives which cannot be corrected prior to or during negotiations without major revision or complete resubmission of the proposal will cause a proposal to be found technically unacceptable. Those proposals found to be technically unacceptable and not reasonably subject to being made acceptable will be eliminated from further consideration.

Id. at 127. The RFP further stated that proposals may be removed from the competition if they were rated as unacceptable for the technical approach or management approach factors. Id. at 129.

The agency received and evaluated 18 proposals prior to establishing the competitive range. AR, Tab 27, Competitive Range Determination, at 2-3. The agency assigned the following ratings to InGenesis' proposal:

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<sup>1</sup> The administration factor included the following subfactors: (1) offer letter; (2) signed solicitation document with all required fill-ins completed; (3) proposed small business subcontracting plan; (4) past performance references; (5) proof of the offeror's participation in the DHS mentor protégé program, if applicable; and (6) compensation plan for professional employees. RFP, amend. 14, at 123.

<sup>2</sup> The solicitation defined unacceptable as a proposal that "fails to demonstrate an understanding of the goals and objectives of the acquisition and fails to meet all minimum [solicitation] requirements. The proposal/quotation has one or more significant weaknesses that will be very difficult and/or impossible to correct. Major revision(s) are required for minimum acceptability." RFP, amend. 15, at 132. A proposal that is rated as unacceptable is ineligible for award. Id.

Technical Approach	Management Approach	Corporate Experience/Past Performance	Administration	Total Evaluated Price
Acceptable	Unacceptable	Satisfactory Confidence	See Below	\$573,815,423.87

Id. at 3. Under the administration factor, the agency assigned ratings of pass or N/A to all subfactors except the small business subcontracting plan subfactor. Id. at 4. The agency assigned a rating of fail to InGenesis' small business subcontracting plan because the plan did not include proposed subcontracting goals presented in terms of a percentage of total subcontracting cost for each business category in the plan. AR, Tab 26, Technical Evaluation Report - Small Business Subcontracting Plans, at 8-9.

On June 14, 2017, the agency advised InGenesis that its proposal was not considered to be among the most highly rated proposals and was being excluded from the competitive range and consideration for award. AR, Tab 28, Notice to Unsuccessful Offeror, at 1. InGenesis requested and received a pre-award debriefing, and this protest followed.

## DISCUSSION

InGenesis protests its exclusion from the competitive range and challenges the agency's evaluation of its proposed management approach as unacceptable.<sup>3</sup> Protest at 4-13. The protester further argues that the agency unreasonably evaluated its small business subcontracting plan. Id. at 13-15. InGenesis raises numerous additional challenges to the agency's evaluation and argues, for example, that the agency failed to consider price when establishing the competitive range. Comments & Supp. Protest at 6-9. While we do not discuss every challenge raised by InGenesis, we have considered them all and find that none provide a basis to sustain the protest.

Where a protest challenges an agency's evaluation, and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the agency's competitive range determination. Government Telecomms., Inc., B-299542.2, June 21, 2007, 2007 CPD ¶ 136 at 4. In so doing, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria. Beretta USA Corporation, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186

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<sup>3</sup> InGenesis also challenges the adequacy of the information provided in its debriefing. Protest at 4-5. The adequacy of a debriefing is not an issue that our Office will consider because the conduct of a debriefing is a procedural matter that does not involve the validity of an award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2.

at 5. An offeror's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly rated. FAR § 15.306(c)(1); FPM Remediations, Inc., B-407933.2, Apr. 22, 2013, 2013 CPD ¶ 107 at 3-4.

### Management Approach Evaluation

InGenesis' proposal was rated unacceptable under the management approach factor, based on the agency's identification of 6 strengths, 11 weaknesses and 1 deficiency. AR, Tab 24, Consensus Technical Evaluation - InGenesis - Management Approach. InGenesis challenges the reasonableness of all 11 weaknesses and the deficiency identified by the agency. Although we do not discuss all of the weaknesses below, we find the agency's evaluation of InGenesis' management approach to be reasonable.

To evaluate offerors' proposed management approaches, the RFP required offerors to "provide a thorough and relevant plan for managing, overseeing, and accomplishing performance as required in the RFP and Statement of Work." RFP, amend. 14, at 121. Offerors were required to: (1) submit an organizational structure and staffing plan, to include an organizational chart with proposed personnel, including supervisors and key personnel; (2) demonstrate the capability and experience of key personnel; and (3) identify proposed subcontractors and team members and provide a plan for managing them. Id., amend. 15, at 122.

The RFP further required that the offeror provide a staff supervision plan. Specifically, the RFP stated:

The Contractor shall propose and describe in detail a supervision plan with the goal of providing, to the greatest extent possible, direct on-site supervision and direction to their employees. It is expected [that] the ratio of clinical to supervisory work for the Key Personnel will vary depending on the number of contract staff under his or her purview. The proposal should address the following:

- a. On site supervision approaches and off site management strategies.
- b. Frequency and duration of on-site supervision.
- c. Number of Key Personnel dedicated to this activity and their geographic location and or distance from respective supervised site, if any.
- d. Plan for addressing locally, [human resource] issues and actions, annual staff evaluations, staff scheduling and communication in collaboration with the onsite local Government Technical Monitor.

RFP at 9. The RFP further identified two types of key personnel--on site and off site--and specifically stated: "The position of Contract Coordinator is an On-Site Key Personnel position. On-site key personnel perform their duties at their respective locations." Id. at 10; see also id. at 15 (instructing that contract coordinators be designated as key personnel). Key personnel were to serve for the life of the contract or until replacements are approved by the agency. Id. at 10, 13, and 15. Offerors were required to submit resumes for all proposed key personnel. Id., amend. 15, at 122.

The agency identified the following deficiency in InGenesis' management approach:

The Offeror has proposed meeting the requirement for [contract coordinators] CCs with [REDACTED]. Further, in accordance with [ ] the solicitation, resumes are required for each Key Personnel proposed. Because the Offeror proposed meeting the CC requirement with [REDACTED], those positions are key personnel because they would be fulfilling the role and responsibilities of the CC position. The Offeror did not provide resumes for all Key personnel identified, which is a material failure to meet a Government requirement.

AR, Tab 24, Consensus Technical Evaluation - InGenesis - Management Approach, at 14 (internal citations omitted). InGenesis argues that the agency's evaluation is unreasonable because it provided resumes for each of its proposed contract coordinators. Protest at 5. The protester contends that the agency should have understood that [REDACTED] were not proposed as key personnel because they do not serve for the life of the contract. Id. at 5-6; Comments & Supp. Protest at 11-12. InGenesis argues that it proposed [REDACTED], and there were no resumes missing from its proposal. Comments & Supp. Protest at 11-12.

Offerors are responsible for submitting a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Aero Simulation, Inc., B-411373, B-413373.2, July 2, 2015, 2015 CPD ¶ 233 at 3. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of its proposal if it fails to do so. Henry Schein, Inc., B-405319, Oct. 18, 2011, 2011 CPD ¶ 264 at 7-8. Based on our review of the record, we find reasonable the agency's identification of the deficiency.

As noted, the RFP defined the position of contract coordinator as on-site key personnel positions, and required that resumes be submitted for all proposed key personnel. RFP at 10 and 122. The InGenesis proposal explicitly states that [REDACTED]. AR, Tab 22, InGenesis Technical Proposal, at 57. The InGenesis proposal further "[REDACTED]," and also proposes [REDACTED]. Id. at 41 and 63. However, the proposal included only [REDACTED] resumes for contract coordinators. Id. at 79-118.

We find reasonable the agency's identification of a deficiency, based on the terms of the RFP and its review of the protester's proposal. The solicitation required offerors to submit the resumes of all key personnel, which includes all proposed contract coordinators. RFP at 10; id., amend. 15, at 122. In addition, InGenesis' proposal stated that [REDACTED]. AR, Tab 22, InGenesis Technical Proposal, at 57. Notwithstanding the solicitation requirement and statement in InGenesis' own proposal, InGenesis failed to submit resumes for [REDACTED]. The agency reasonably assigned InGenesis' proposal a deficiency for failing to provide resumes for all of its proposed contract coordinators.

Related to the position of contract coordinator, the agency also identified the following weakness in InGenesis' management approach:

The Offeror's proposal contains several inconsistencies that pose risk to the Government. The Offeror is proposing that [REDACTED]. The Offeror is also inconsistent in the number of CC's it is proposing. . . . The inconsistencies presented throughout the Offeror's Management Approach increases the risk of unsuccessful contract performance.

AR, Tab 24, Consensus Technical Evaluation - InGenesis - Management Approach, at 10. InGenesis argues that this weakness is unjustified because smaller sites do not require full-time contract coordinators to provide daily on-site supervision. Protest at 7-8. InGenesis states that it proposed [REDACTED]. Id. InGenesis argues that any misunderstanding in its proposal could have been remedied with the addition of a sentence or two. Comments & Supp. Protest at 12-13.

As noted above, the RFP stated that offerors should provide a detailed supervision plan with "the goal of providing, to the greatest extent possible, direct on-site supervision and direction to their employees." RFP at 9. The InGenesis proposal states that it will provide "[REDACTED]," and that it "[REDACTED]." AR, Tab 22, InGenesis Technical Proposal, at 2 and 43; see also id. at 63 ("[REDACTED].") and 64-65 ("[REDACTED]."). However, as already noted, InGenesis provided only [REDACTED] resumes for contract coordinators, and its proposal further stated:

[REDACTED]

Id. at 66. On this record, we find unobjectionable the agency's conclusion that the InGenesis proposal contained inconsistencies regarding the number of contract coordinators proposed and the extent of daily on-site supervision to be provided at all sites, and that this presented a weakness in its management approach.

The agency also identified the following as a weakness in the InGenesis proposal:

[T]he Offeror states that '[REDACTED].' The proposed CC for Florence is not [REDACTED] and does not meet the Offeror's proposal for CC's

management and duties. The inconsistency in the Offeror's proposed approach adds increased risk of unsuccessful contract performance.

AR, Tab 24, Consensus Technical Evaluation - InGenesis - Management Approach, at 14. InGenesis argues that this weakness is unreasonable because the proposed candidate is [REDACTED]. Protest at 12. InGenesis further argues that the weakness is unreasonable because the RFP did not require that contract coordinators also be [REDACTED], and the fact that one of its proposed contract coordinators is not [REDACTED] is immaterial. Comments & Supp. Protest at 14.

The RFP required offerors to propose a temporary vacancy/absence coverage plan to ensure staffing is met 24 hours a day, 7 days per week, 365 days per year at 21 clinics nationwide. Specifically, the RFP instructed:

The Contractor shall propose and describe in detail, a plan for coverage of sick, annual, emergency, Family Medical Leave Act (FMLA), Leave of Absence (LOA), Paid Time Off (PTO), Military, and any other occasion that may result in absence from work for a day or longer.

RFP at 9. To ensure medical staffing coverage, the InGenesis proposal stated that "[REDACTED]," and that "[REDACTED]." AR, Tab 22, InGenesis Technical Proposal, at 65; see also id. at 51 ("[REDACTED]" and "[REDACTED]"). However, unlike its other proposed contract coordinators, the proposed contract coordinator for the Florence facility is not [REDACTED]. See id. at 93. Although we agree with the protester that the RFP did not require that contract coordinators also be [REDACTED], we have no basis to question the agency's finding of a weakness here for InGenesis' failure to propose a candidate consistent with its own approach for staffing the contract coordinator positions and coverage plan.

In sum, our review of the record indicates that the agency reasonably evaluated InGenesis' management approach. Based on the weaknesses and deficiency identified, it was reasonable for the agency to assign InGenesis a rating of unacceptable under this factor, finding that the proposal failed to demonstrate an understanding of the goals and objectives of the acquisition, had one or more significant weaknesses that would be very difficult or impossible to correct, and required major revisions. The protester's disagreement does not provide a basis to sustain the protest. Ben-Mar Enters., Inc., supra.

#### Small Business Subcontracting Plan

InGenesis also challenges the fail rating assigned to its small business subcontracting plan for not including proposed subcontracting goals presented in terms of a percentage of total subcontracting cost for each business category in the plan. The protester argues that the agency cannot reasonably assign a fail rating to its small business subcontracting plan for omitting information when the template provided in the RFP did not designate a space for offerors to insert the proposed percentages, and that in any

event, the agency can compute these percentages itself. Protest at 13-15; Comments & Supp. Protest at 14-15. The agency responds that the template's failure to designate a space for offerors to simply input the required percentages did not preclude InGenesis from providing the required information and does not otherwise excuse its failure to comply with a clear instruction to include this information in its plan. Contracting Officer's Statement (COS) at 15-16; Memorandum of Law (MOL) at 14-15.

The record shows that InGenesis used the small business subcontracting plan template provided in the RFP to prepare its small business subcontracting plan. Compare RFP, attach. J-15, ICE Subcontracting Plan Model with Tab 23, InGenesis Small Business Subcontracting Plan. Accordingly, the RFP required and the InGenesis' small business subcontracting plan explicitly stated: "FAR 19.704(a)(1) requires separate dollar and percentage goals for using small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business, and service disabled veteran-owned small business concerns as subcontractors for the base year and each option year. . . . Please state separate dollar and percentage goals for [each category of small business concerns]." AR, Tab 23, InGenesis Small Business Subcontracting Plan, at 2-3. Nonetheless, it is undisputed that InGenesis failed to include any proposed subcontracting percentages in its plan. In addition, the agency's evaluation noted that the total proposed contract price included in InGenesis' small business subcontracting plan was not the same as the total proposed contract price included in its price proposal, and that the plan was not signed and dated. AR, Tab 26, Technical Evaluation Report - Small Business Subcontracting Plans, at 8-9.

On this record, we find unobjectionable the agency's evaluation of InGenesis' small business subcontracting plan. Contrary to the protester's argument, to the extent that the total proposed contract price indicated in InGenesis' small business subcontracting plan is different from the proposed price indicated in its price proposal, the agency could not definitively compute the percentage goals that InGenesis may have intended to propose. Even so, the agency determined, and the protester admits, that its small business subcontracting plan did not provide the required percentages. An offeror that does not submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. iGov, et al., B-408128.24 et al., Oct. 31, 2014, 2014 CPD ¶ 329 at 15 (denying protest challenging unacceptable rating assigned under small business subfactor for failure to provide required information). Accordingly, we deny this basis of protest.

### Competitive Range Determination

Finally, InGenesis challenges its exclusion from the competitive range and argues that the agency failed to meaningfully consider price when it excluded InGenesis from the competitive range. Comments & Supp. Protest at 6-7. InGenesis also argues that the agency's competitive range determination is unreasonable and inconsistent with the



evaluation of other offerors because other offerors included in the competitive range also received fail ratings for their proposed small business subcontracting plans.<sup>4</sup> Id. at 14-15.

The agency responds that, consistent with the RFP, all offerors that received an unacceptable rating in the technical approach and management approach factors were removed from the competitive range, accordingly InGenesis was eliminated because its management approach was unacceptable. COS at 16; MOL at 17; Supp. MOL at 6 and 11. The agency argues that it meaningfully considered price when establishing the competitive range. Supp. MOL at 3.

The record demonstrates that all proposals included in the competitive range were rated as good for the technical approach factor, marginal or higher for the management approach factor, and satisfactory confidence or higher for the corporate experience/past performance factor. AR, Tab 27, Competitive Range Determination, at 16. For the offerors in the competitive range that received a rating of marginal for their management approaches, the contracting officer determined that the deficiencies that resulted in the marginal ratings assigned could be easily remedied, and that the ratings would significantly improve after negotiations. Id. All competitive range offerors received pass or N/A ratings for all subfactors in the administration factor, except for three offerors that received a fail rating for the small business subcontracting plan subfactor based on accounting or clerical errors which affected the subcontracting goal percentage calculations submitted, errors that the contracting officer also expected to be easily remedied. Id. Regarding price, the competitive range determination stated:

All Offerors proposed prices, including all options, were reviewed and were found to be balanced and reasonable due to adequate price competition and comparison to historical prices. Although the Offeror[s] excluded [from] the competitive range are offering proposed prices that are lower than some of the Offeror[s] included in the competitive range, the Offeror[s] are not among the most highly rated and it was determined that the lower price did not warrant including them in the competitive range.

Id. at 18. All offerors included in the competitive range had a lower total evaluated price than InGenesis. Id. at 16.

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<sup>4</sup> After receiving the agency report, InGenesis also challenges for the first time the agency's rating of its technical approach as acceptable as compared to other offerors and argues that it should have been rated as good. Comments & Supp. Protest at 8-9. We need not address this allegation since, as discussed above, we find reasonable the agency's evaluation of InGenesis' management approach as unacceptable, and on that basis its proposal is not eligible for award under the terms of the RFP.

Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise concludes have no realistic prospect of being selected for award. FAR § 15.306(c)(1); see Avar Consulting, Inc., B-410308, Dec. 8, 2014, 2014 CPD ¶ 362 at 4. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, exclusion from the competitive range is generally permissible. Government Telecomms., Inc., supra, at 9. The evaluation of proposals and resulting determination as to whether a particular offer is in the competitive range are matters within the discretion of the contracting agency. ECC Renewables, LLC; Pacific Power, LLC, B-408907 et al., Dec. 18, 2013, 2014 CPD ¶ 9 at 6.

Here, we find reasonable the agency's determination to exclude InGenesis from the competitive range. As noted, the agency determined that it would include in the competitive range all offerors that were rated as good in the most heavily-weighted technical approach factor, and among these offerors, those that had received marginal ratings for the second most heavily-weighted management approach factor could easily remedy the deficiencies in their proposals and significantly improve their ratings. By contrast, InGenesis' technical approach was rated acceptable, and its management approach was rated unacceptable based on numerous weaknesses and a deficiency that constituted a material failure in meeting the requirements. Additionally, although the agency determined that all offerors, including InGenesis, had proposed balanced and reasonable prices, InGenesis' price was higher than all other offerors included in the competitive range. On this record, there is simply no basis to conclude that the agency was required to find that InGenesis' lower-rated, higher-priced proposal was among the most highly rated, or that the proposal had a realistic chance of being selected for award.

The protest is denied.

Susan A. Poling  
General Counsel