



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Assist Consultants Inc.

**File:** B-408365.2

**Date:** August 2, 2013

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Faron McFarland, Assist Consultants Inc., for the protester.  
Maj. Samuel E. Gregory, and Scott N. Flesch, Esq., Department of the Army,  
for the agency.  
Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging the agency's evaluation of the protester's proposal as technically unacceptable is denied where the agency reasonably found that the protester's proposal failed to comply with a mandatory technical requirement.

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### DECISION

Assist Consultants Inc., of Kabul, Afghanistan, protests the evaluation of its proposal submitted in response to Request for Proposals (RFP) No. W56KJD-13-R-0008, issued by the Department of the Army for supply and delivery of petroleum fuel products to Afghan National Security Forces (ANSF) sites throughout Afghanistan. Assist argues that the agency improperly found that its proposal was technically unacceptable, and therefore ineligible for award.

We deny the protest.

### BACKGROUND

The RFP anticipated the award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts, under which fixed-price delivery orders would be competed. RFP at 5-6. The ordering period for the ID/IQ contracts was expected to be from June 1, 2013, through December 31, 2014.

## Evaluation Factors

The RFP identified the following evaluation factors: (1) price, (2) technical capability, and (3) past performance. Id. § M.1(c). The technical capability factor had three subfactors: (1) fuel fleet requirements, (2) quality control plan, and (3) vetting plan. Id. To receive consideration for award, proposals had to achieve a rating of no less than acceptable for the technical capability factor. Id. § M.1(c).

The RFP stated that all proposals would be evaluated for responsiveness to the solicitation and completeness with regard to price. Id. § M.1(d). The government would rank offerors by price, from lowest to highest, and then, beginning with the lowest-priced, responsive offeror, the agency would evaluate the proposal for technical and past performance acceptability. Id. If a proposal was found to be technically acceptable, and was evaluated as either acceptable or neutral in past performance, that offeror would be selected as an awardee. Id.

As relevant here, under Factor 2, technical capability, the RFP stated that a proposal would be evaluated “to determine the extent it demonstrates a comprehensive and complete capability to perform the work described in the solicitation” and that “[o]fferors must be responsive to all of the requirements in the solicitation, and provide sufficient information to allow evaluation of the proposals.” Id. § M.3(b)(i). The solicitation also stated that the technical proposal “must be succinct, specific, detailed, and complete” and “must clearly demonstrate that the offeror has a thorough understanding of the requirement.” Id. § M.3(b)(ii). Offerors were further advised that “[g]eneral statements that offerors understand the factors and can or will comply with the requirements of the solicitation will be considered inadequate” and that “[s]tatements to the effect that offeror understands, can or will comply with the solicitation . . . will be considered unacceptable.” Id. § M.3(b)(iii).

The RFP stated that to be considered technically acceptable, “offerors must be considered technically acceptable in all technical areas (Subfactors 1-3).” Id. § M.3(b)(v). Under subfactor 2 of the technical capability factor, quality control plan, the RFP stated that “[t]he quality control plan shall include detailed procedures to identify, mitigate and prevent defective commodities” and that “[d]efective commodities include, but are not limited to: failure to deliver on requested date and/or time, delivery of the incorrect quantity of fuel, delivery of the wrong type of fuel, or delivery of fuel that does not meet the quality standards identified in the [Statement of Work].” Id. § M.3(b)(1).

To receive a pass rating under this subfactor, an offeror’s quality control plan was required to pass all of the elements listed in the RFP’s evaluation criteria. Specifically, the RFP included the following standard which contained the specific elements, as relevant here, required to pass the quality control plan subfactor:

Pass: Without restating the requirement, the offeror must submit a plan that details all of the following:

1. Provide sample fuel testing documents from all refineries where fuel will be purchased for this contract. See Section 4.1 of the SOW [Statement of Work] for specifics.

\* \* \* \* \*

Fail: The Offeror's plan fails to provide any one of the elements required to "pass."

Id.

#### Evaluation and award

The Army received proposals from 87 offerors, including Assist, and evaluated all of the proposals for responsiveness. AR, Tab 16, Source Selection Decision Document (SSDD) at 10. A total of 44 proposals, including Assist's, were considered responsive. Id. at 14. The agency ranked the 44 proposals from lowest to highest based upon their proposed price<sup>1</sup> and then evaluated them for technical acceptability. Id. The agency found 9 of the proposals technically acceptable, and the remaining 35, including Assist's, technically unacceptable. Id. at 16. The Army deemed all nine of the technically acceptable offers acceptable or neutral in past performance, and found that all nine offerors were responsible. Id. at 18-19. The agency awarded multiple award contracts to these nine offerors. Id. at 20.

On May 18, 2013, the agency notified Assist that its proposal was rated technically unacceptable. AR, Tab 17, Unsuccessful Offeror Notice (May 18, 2013) at 1. Assist requested a debriefing, which it received on May 22. The debriefing stated that Assist's proposal was found technically unacceptable under two of the RFP's technical capability subfactors: quality control plan and vetting plan. AR, Tab 18, Debrief Letter (May 22, 2013) at 1. In particular, Assist's proposal failed two of the mandatory elements required for the quality control plan, and one of the mandatory elements required for the vetting plan, which the debrief letter explained as follows:

#### Failed Subfactor 2.1

Comments: No documents provided, Proposal does not provide fuel testing documents from all refineries where fuel will be purchased.

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<sup>1</sup> Assist's proposal was ranked the fifth lowest-priced. Id. at 15.

## Failed Subfactor 2.2

Comments: While the vendor does speak on non-conforming product or service (pg 25), it deals with vendor long-term actions. No discussion is pointed toward replacement or remediation of the off spec fuel within the required 24 hour period.

## Failed Subfactor 3.2

Comments: No discussion on reinvestigation procedures and timeframes.

Id.

This protest followed.

## DISCUSSION

Assist argues that the Army unreasonably found its proposal unacceptable with regard to the RFP's following three mandatory elements: (1) the requirement under subfactor 2 to provide fuel testing documents; (2) the requirement under subfactor 2 to provide a written step-by-step plan to remedy a rejected fuel delivery within 24 hours; and (3) the requirement under subfactor 3 to discuss procedures regarding periodic reinvestigations of employees to ensure no criminal misconduct or suspected insurgent activity. For the reasons discussed below, we conclude that the agency reasonably evaluated the protester's proposal as unacceptable for failing to provide the required fuel testing documents under subfactor 2. Because offerors were required to receive a pass rating for each mandatory element to be considered for award, we need not address the agency's evaluation of the protester's proposal as failing to provide either the written plan to remedy rejected fuel deliveries, or the discussion of its procedures regarding periodic reinvestigations of employees.

The evaluation of an offeror's proposal is a matter within the agency's discretion.

IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13.

A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Assist contends that the Army unreasonably found its proposal unacceptable for failing to include sample fuel testing documents. To receive a pass rating under subfactor 2, an offeror's quality control plan was required to "pass" all of the elements listed in the RFP's evaluation criteria. One of the mandatory elements listed under subfactor 2 required that offerors submit a plan that detailed the following:

Provide sample fuel testing documents from all refineries where fuel will be purchased for this contract. See Section 4.1 of the SOW for specifics.

RFP § M.3(b)(1).

The agency found Assist's proposal unacceptable under subfactor 2 because its quality control plan did not include sample fuel testing documents from all refineries where fuel will be purchased for the contract. See AR, Tab 13, Technical Evaluator No. 1 Form, at 4 ("Proposal does not provide fuel testing documents from all refineries where fuel will be purchased."); Tab 14, Technical Evaluator No. 2 Form, at 4 ("No documents provided."); Tab 15, Technical Evaluator No. 3 Form, at 4 ("Fail--not provided."); Tab 16, SSDD, at 32 ("Fail--not provided.").

Assist concedes that it did not provide any sample fuel testing documents with its proposal. Comments at 1 ("Assist does not deny that its proposal lacked [sample fuel testing documents]."). The protester contends, however, that the RFP did not require that offerors provide such documents in their proposal, and instead asserts that the RFP required only that offerors submit a plan that set forth "procedures to identify, mitigate and prevent defective commodities." Comments at 5.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2; Fox Dev. Corp., B-287118.2, Aug. 3, 2001, 2001 CPD ¶ 140 at 2.

In support of its interpretation, the protester relies on a sentence in the RFP concerning sample fuel testing documents which directs offerors to "[s]ee Section 4.1 of the SOW for specifics." RFP § M.3(b)(1). Assist argues that under Section 4.1, an offeror's obligation to provide quality control documents during performance is left solely to the agency's discretion, and therefore, the RFP required only that an offeror's quality control plan identify "procedures" for providing such documentation during performance, if ever requested, and that Assist's quality control plan

identified the procedures it would use during performance to comply with the requirements of SOW Section 4.1.<sup>2</sup> Comments at 5.

We conclude that the agency's interpretation of the RFP was reasonable, and that the protester's differing interpretation is not reasonable. As discussed above, to "pass" subfactor 2, the RFP required that offerors "[p]rovide sample fuel testing documents from all refineries where fuel will be purchased for this contract." RFP § M.3(b)(1). The RFP also stated that any plan that "fails to provide any one of the elements required to 'pass,'" including the requirement to provide sample fuel testing documents, will "fail" the subfactor. *Id.* Finally, the RFP stated that "offerors must be considered technically acceptable in all [subfactors]" to be considered technically acceptable overall. *Id.* § M.3(b). We think the RFP clearly advised that the agency would evaluate whether offerors submitted sample fuel testing documents as one of the mandatory elements required for acceptability under subfactor 2.

With regard to the RFP's reference to Section 4.1 of the SOW, while the pertinent portion of Section 4.1 discusses, among other things, that fuel testing documents must be provided upon request during contract performance,<sup>3</sup> this reference does not negate the RFP's requirement that offerors must provide sample fuel testing documents as part of their proposed quality control plans. Absent an express exception to the unequivocal requirement that offerors must provide sample fuel testing documents from all refineries where fuel will be purchased for this contract, there was no reasonable basis for Assist to ignore the requirement or interpret the requirement more loosely. See *LS3 Inc.*, B-401948.11, July 21, 2010, 2010 CPD ¶ 168 at 2-3; *SNAP, Inc.*, B-402746, July 16, 2010, 2010 CPD ¶ 165 at 3. In sum, the protester's interpretation is contrary to the clear terms of the RFP, and thus, unreasonable.<sup>4</sup>

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<sup>2</sup> Assist also argues that it was unreasonable for the RFP to require offerors to provide sample documents, without defining the form and content of the documents, when technical acceptability is being evaluated on a pass/fail basis. To the extent the protester contends that the solicitation was flawed, this argument is untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2013) (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).

<sup>3</sup> Section 4.1 states, as relevant here: "The contractor shall deliver the [fuel] products free of liquid and solid contaminates, sand, dirt, sediment and 'free' water in accordance with [stated applicable] standards. . . . In addition, batch quality control documents from the refinery where the fuel was purchased must be provided to the U.S. Government upon request." RFP, SOW § 4.1.1.

<sup>4</sup> The protester also contends that its interpretation is reasonable because the agency found other offerors' proposals technically unacceptable for failing to include  
(continued...)

Alternatively, Assist argues that interpreting the RFP as requiring offerors to provide sample fuel testing documents with their quality control plans evidences a latent ambiguity, of which it became aware only after its proposal was rejected. This argument is without merit. As discussed above, we find that the agency's reading of the RFP was the only reasonable one; in other words, the RFP was not ambiguous. LS3 Inc., *supra*, at 2-3. In any event, even if we agreed that the provision requiring submission of the documents was ambiguous, any ambiguity was patent, *i.e.*, clear or obvious on the face of the RFP, rather than latent. Since any alleged ambiguity regarding these provisions was apparent on the face of the RFP itself, a protest on this ground was required to be filed prior to the submission of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. For this reason, even if we were to conclude that the solicitation requirements regarding sample fuel testing documents were ambiguous, Assist cannot now timely challenge this matter.

The protest is denied.

Susan A. Poling  
General Counsel

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(...continued)

sample fuel testing documents, which means that these offerors "interpreted the Solicitation with respect to the quality control plan the same way as Assist and shared the same fate." Comments at 6-7. The protester's assumption about the other offerors, however, is unavailing. The record does not show that the other offerors shared Assist's interpretation of the RFP's requirements, and more importantly, the fact remains that Assist's interpretation contradicts the plain language of the RFP.