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Decision

Matter of: Government Logistics Support Services LLC

File: B-408683; B-408683.2; B-408683.3; B-408683.4

Date: December 3, 2013

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Pamela J. Mazza, Esq., Alexander O. Levine, Esq., and Patrick T. Rothwell, Esq., Piliero Mazza PLLC, for B3 Solutions, LLC, an intervenor.

Andrew Bramnick, Esq., and Marina M. Kozmycz, Esq., Department of Defense, for the agency.

Charles W. Morrow, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest arguing that the agency's evaluation of proposals abandoned the terms of the solicitation is sustained where the record shows that: (1) the agency amended the solicitation, which initially stated that the "purpose of the contract is to use laborers and warehousemen" to provide certain types of moves and services, by deleting the reference to laborers but retaining the reference to warehousemen; (2) the protester, in keeping with the amended solicitation, revised its proposal to offer only the more expensive labor category of warehousemen to perform moves, while the awardee's proposal offered a lower-priced mix of warehousemen and laborers; and (3) the agency ignored the solicitation change--and the fact that the awardee was offering a mix of warehousemen and laborers--and, in a tradeoff decision, concluded that the protester's higher-rated, but higher-priced proposal was not worth the price premium as compared to the awardee's lower-rated, but lower-priced proposal.

DECISION

Government Logistics Support Services, LLC (GLSS), of Ellicott City, Maryland protests the award of a contract to B3 Solutions, LLC, of Alexandria, Virginia, under request for proposals (RFP) No. HQ0034-13-R-0019, issued by the Department of Defense (DOD), Washington Headquarters Services (WHS), for logistics support services. GLSS challenges the agency's evaluation of GLSS's and B3's proposals and the award decision.

We sustain the protest.

BACKGROUND

The RFP was issued on December 31, 2012, as a competitive set-aside under the Small Business Administration 8(a) program, and sought proposals to provide logistics support services under a fixed-price contract for a base year and four 1-year options. These services, primarily involve moving furniture and other office supplies for certain DOD agencies within the Pentagon and the National Capital Region, including the Federal Facilities Division (FFD), the Remote Delivery Facility (RDF), the Property Management Branch (PMB) of WHS, and the Joint Staff. RFP, Performance Work Statement (PWS) § 1.1¹; Agency Report (AR) at 1. The solicitation advised that award was to be made on a best-value basis, considering the following four evaluation factors: (1) technical approach, (2) management approach, (3) past performance, and (4) price. RFP at 104. For purposes of award, the technical approach and past performance factors were of equal importance, followed in importance by management approach factor, and then price. The non-price factors, when combined, were more important than price. Id.

The technical approach factor contained two equally-weighted subfactors: (1) approach to quality control and meeting contract objectives/goals, and (2) approach to meeting technical requirements. Id. at 104-106. The management approach factor also had two equally-weighted subfactors: (1) organizational structure, and (2) management plan. Id. The RFP advised that, for the technical approach and management approach factors, offerors' proposals would be assigned one of the following adjectival ratings: blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. The RFP further advised that if any factor or subfactor is rated unacceptable, the entire proposal would be rated unacceptable. Id. at 104-105.

With respect to past performance, the RFP advised that the evaluation would assess an offeror's probability of meeting the solicitation requirements, considering the offeror's demonstrated record of performance in supplying products and services that meet the contract requirements. Id. at 106. The RFP advised that offerors' past performance would be assigned one of the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral). Id. at 107. The RFP explained that the evaluation would be based on two considerations: (1) the relevance of a contractor's recent performance to the effort being acquired, and (2) how well the contractor performed on prior contracts. Id. at 106-107. The relevance ratings

¹ Citations to the RFP are to the conformed version provided by the agency, unless otherwise noted.

were: very relevant, relevant, somewhat relevant, and not relevant. Id. The RFP stated that information about an offeror's performance as a prime contractor may be considered more significant and given more weight in the past performance evaluation. Id. at 106.

Eight amendments were issued to the RFP. Of relevance here, on February 14, 2013, the agency issued RFP amendment No. 3, which made changes to the PWS. The PWS addressed requirements for three areas of performance in the background section: (1) the Pentagon Building Management Office dockmaster office; (2) the Joint Staff; and (3) the "Federal Facilities Division (FFD) Property Management Branch (PMB) Office of the Secretary of Defense Logistics Support." RFP (initial version), PWS part 1.3, at 11-12. RFP amendment No. 3 revised the PMB requirements with regard to the staff to be provided. The initial PWS stated as follows:

The Federal Facilities Division (FFD) Property Management Branch (PMB) Office of the Secretary of Defense Logistics Support

The Federal Facilities Division[] (FFD) requires logistics support for the Office of the Secretary of Defenses (OSD) and component OSD organizations (but not the uniformed services or other Defense Agencies of Field Operating Agencies) located throughout the National Capital Region (NCR). **The purpose of the contract is to use laborers and warehousemen** to support small moves and the issuing, turn-in, delivery of furniture and other durable office supplies and equipment to OSD organizations located in the Pentagon and other DoD buildings.

RFP (initial version), PWS part 1.3, at 12 (emphasis added).

The relevant part of the amended PWS deleted the reference to laborers, as follows:

The purpose of the contract is to use warehousemen to support small moves and the issuing, turn-in, delivery of furniture and other durable office supplies and equipment to OSD organizations located in the Pentagon and other DoD buildings.

RFP amend. 3, PWS part 1.3, at 3 (emphasis added).

Nine offerors, including GLSS and B3², submitted proposals by the closing date on

² GLSS is an 8(a) joint venture between NATI-Eastek, the incumbent contractor, and Cornerstone Farm Express. See AR, Tab 15, GLSS Proposal, at 3.

February 1.³ The agency convened a technical evaluation board (TEB), and a price/past performance and small business panel to review the offerors' proposals. Following the evaluations, the agency established a competitive range of the four most highly-rated proposals, which included GLSS and B3. WHS conducted written discussions with the offerors on June 10, and received final proposal revisions on July 5. The agency's final evaluation ratings for the protester and intervenor were as follows:

	GLSS	B3
TECHNICAL APPROACH	GOOD/PURPLE	ACCEPTABLE/ GREEN
Quality Control	Outstanding/Blue	Acceptable/Green
Technical Rqmts.	Good/Purple	Acceptable/Green
MANAGEMENT APPROACH	GOOD/PURPLE	ACCEPTABLE/ GREEN
Organization Structure	Outstanding/Blue	Acceptable/Green
Management Plan	Good/Purple	Acceptable/Green
PAST PERFORMANCE	SATISFACTORY CONFIDENCE	UNKNOWN CONFIDENCE
PRICE	\$15,509,336	\$12,594,314

AR, Tab 28, Source Selection Decision Document, at 36, 41.

The source selection authority (SSA) considered the proposals of the four competitive range offerors, concluded that GLSS and B3 provided the most advantageous proposals to the government, and performed a comparative analysis of the two proposals under the various evaluation factors. See id. at 47-51. The SSA noted numerous technical advantages offered by GLSS, such as its site-specific knowledge based on its [DELETED], who "exceed[ed] the requirements of the PWS." Id. at 48. The SSA concluded, however, that "after comparing [the] technical, past performance and price evaluations for GLSS and B3, there is not enough merit to justify that GLSS would provide \$2,915,021.30 in additional value if

³ WHS received initial proposals on February 1, following the issuance of the first two RFP amendments. The agency subsequently issued amendments Nos. 3 and 4. The solicitation, as issued, required offerors to staff the Remote Delivery Facility from 8 a.m. to 3 p.m. on Saturdays; amendment No. 4, among other things, clarified the scope of the Saturday delivery requirements, explained the process by which the government could cancel the Saturday requirements, and requested offerors to resubmit their revised proposals by April 9. See Contracting Officer's Statement at 3; AR, Tab 6, RFP amend. 4, at 2.

selected for award over B3.” Id. at 50. WHS awarded the contract to B3 on August 13. The agency provided a post-award debriefing to GLSS, and this protest followed.

DISCUSSION

GLSS raises numerous challenges to WHS’s evaluation of GLSS’s and B3’s technical and price proposals and past performance. Based on these alleged errors, the protester argues that the selection decision was flawed, and further argues that the agency failed to meaningfully consider the technical superiority of GLSS’s proposal, in accordance with the terms of the solicitation. Finally, the protester argues that the agency failed to describe its requirements in the solicitation, as evidenced by the agency’s material relaxation of certain performance requirements for B3.

As discussed below, we sustain the protest based on the protester’s arguments concerning the relaxation of the requirement to provide warehousemen to staff the PMB requirements. We also note concerns regarding the agency’s relaxation of its requirements concerning Saturday staffing.⁴

Timeliness of Certain Issues

As a preliminary matter, WHS argues that GLSS’s challenge to the agency’s evaluation of its technical, management and past performance ratings are untimely because GLSS was informed of its ratings during discussions. We disagree. Under our Bid Protest Regulations, protests other than those based upon alleged improprieties in a solicitation, are required to be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2013). Our Regulations also provide an exception to this general 10-day rule for a protest that challenges “a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required.” Id. In such cases, as here, with respect to any protest basis which is known or should have been known either before or as a result of the requested and required debriefing, a protest cannot be filed before the debriefing date offered, but must be filed not later than 10 days after the date on which the debriefing is held. Id.; see The Boeing Co., B-311344 et al., Jun. 18, 2008, 2008 CPD ¶ 114 at 28-29. Here, because the agency continued negotiations with GLSS, as opposed to eliminating its proposal from the competitive range, and because both GLSS and

⁴ GLSS raised a number of issues concerning the evaluation of its proposal, B3’s proposals, and the agency’s actions following the award. We have reviewed each of the protester’s allegations and find that none provides a basis to sustain the protest, other than as discussed below.

the agency still considered GLSS's proposal to be eligible for the award, there was nothing at that time for GLSS to protest. See The Boeing Co., supra; Remington Arms Co. Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 8. For this reason, we consider the challenges raised in the protester's initial protest to be timely.

While we find the arguments raised in GLSS's initial protest to be timely, we also conclude that certain arguments raised by the protester in its supplemental protests are untimely. As discussed above, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). The staggered presentation of issues, each of which requires a separate explanation from the agency, constitutes a piecemeal presentation of issues that undermines GAO's strict time schedule for issuance of a decision; our Office therefore applies our timeliness rules to all supplemental protests, even when the protester purports to merely present examples of flaws generally alleged in a timely protest. Beechcraft Def. Co., LLC, B-406170.2 et al., June 13, 2013, 2013 CPD ¶ 147 at 24 n.9; Planning and Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11.

For example, GLSS argues that WHS unreasonably assigned its past performance a satisfactory confidence rating, rather than a higher rating of substantial confidence.⁵ The protester was advised in its debriefing that the agency considered its past performance to merit a satisfactory confidence rating, in part, because the agency viewed NATI-Eastek (one of the joint venture partners that forms GLSS) to be the incumbent contractor, rather than GLSS. AR, Tab 32, GLSS Debriefing (Aug. 7, 2013) at 6-7. Additionally, the agency assigned NATI-Eastek's performance of the incumbent contract a relevant rating, rather than a highly-relevant rating. Id. The agency explains that its rating was intended to reflect its view that GLSS, and not NATI-Eastek, is the prime contractor here, and that a highly relevant rating was not merited for the incumbent contract. AR at 14-15. In this regard, the agency notes that the RFP advised offerors that "[p]ast performance information about the offeror as a prime contractor may be considered more significant and given more weight in the past performance evaluation." RFP at 106.

GLSS's initial and first supplemental protests argued that it should have received a "substantial confidence" rating for past performance because, the protester contends, GLSS was the incumbent contractor and received positive performance

⁵ Although the agency's evaluation of GLSS's past performance was also disclosed by the agency during discussions, we do not find that the discussion questions triggered an obligation for the protester to challenge the evaluation, for the reasons discussed above.

ratings for its contract references. Protest (Aug. 8, 2013) at 7-8; Supp. Protest (Aug. 13, 2013) at 8-9. The initial protest, however, did not challenge the agency's rating of NATI-Eastek's performance of the incumbent contract as relevant, as opposed to highly relevant, nor did the protester challenge the agency's designation of NATI-Eastek, rather than GLSS, as the incumbent contractor. Instead, the protester first raised this issue in its comments on the agency report on September 30. Protester's Comments (Sept. 30, 2013) at 11. Because the protester did not challenge these issues within 10 days of receiving its post-award debriefing on August 7, we conclude that the subsequent allegation on September 30 constitutes an unwarranted piecemeal presentation of the protester's challenge to the evaluation of its past performance. We therefore dismiss this argument as untimely.

Warehousemen Requirement

GLSS argues that WHS should have rated B3's proposal unacceptable under the technical approach factor because B3 did not propose exclusive use of warehousemen for the PMB warehouse requirements set forth in the PWS, as required by the RFP after the issuance of amendment No. 3. The protester further contends that the agency improperly accepted the awardee's non-compliant lower-priced laborers and other staff instead of requiring reliance on warehousemen as set forth in the RFP. The protester points out that warehousemen have higher mandatory rates of pay under the collective bargaining agreement applicable here, and that the price of offering only warehousemen is higher than the price of offering a mix of warehousemen and laborers. For the reasons discussed below, we agree.

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 and 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. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is unacceptable and may not form the basis for award. Raytheon Technical Servs. Co. LLC, B-404655.4 et al., Oct. 11, 2011, 2011 CPD ¶ 236 at 9.

As discussed above, the PWS required offerors to provide staffing for the PMB "to support small moves and the issuing, turn-in, delivery of furniture and other durable office supplies and equipment to OSD organizations located in the Pentagon and other DoD buildings." RFP amend. No. 3, PWS part 1.3. While the original PWS stated that the "purpose of the contract is to use laborers and warehousemen" for these activities, RFP amendment No. 3 deleted the reference in the PWS to laborers, while retaining the reference to warehousemen.

The record shows that B3 proposed to perform the PMB requirement with [DELETED],⁶ [DELETED]. AR, Tab 22, B3 Revised Proposal (June 14, 2013), at I-7. By contrast, GLSS's revised proposal offered to perform the requirement with [DELETED]. AR, Tab 16, Revised GLSS Proposal (Mar. 9, 2013), at I-20.⁷

GLSS explains that its proposal revisions (on February 20 and April 9) reflected its changes to its initial staffing approach for the PMB requirements in response to RFP amendment No. 3 (which was issued on February 14). Specifically, as the record shows, the protester originally proposed a mix of 7 laborers and 5 warehousemen to perform the PMB requirements. AR, Tab 14, Initial GLSS Proposal (Feb. 1, 2013), at I-20. Following the issuance of RFP amendment No. 3, the protester revised its proposal to remove all proposed laborers for the PMB requirements, and increased the number of proposed warehousemen, who have a higher wage rate under the applicable collective bargaining agreement. AR, Tab 15, Revised GLSS Proposal (Feb. 20, 2013), at I-20; Tab 16, Revised GLSS Proposal (Mar. 9, 2013), at I-20. The protester's revised proposals explained that these changes were in response to RFP amendment No. 3. AR, Tab 15, Revised GLSS Proposal (Feb. 20, 2013), Cost and Pricing Rationale, at 1; Tab 16, Revised GLSS Proposal (Mar. 9, 2013), Cost and Pricing Rationale, at 1.

WHS argues that GLSS's interpretation of the PWS as requiring exclusive use of warehousemen to perform the warehouse tasks for the PMB is unreasonable. The agency contends that neither the original nor the amended PWS were intended to direct offerors to use any specific labor categories. See AR at 9.

In this regard, WHS acknowledges that PWS part 1.3, as amended, specifically mentions warehousemen, but argues the solicitation did not limit offerors' ability to propose personnel other than warehousemen to perform the required tasks. The agency also notes that no other section of the PWS describes the RDF, PMB, and Joint Staff tasks as requiring specific personnel or a specific staffing mix. WHS also argues that none of the PWS performance matrices identify furnishing warehousemen as a "performance objective" or requirement. See RFP, PWS

⁶ The protester does not dispute that these [DELETED] proposed staff are considered warehousemen. See Protester's Comments (Sept. 30, 2013) at 13-14.

⁷ We note for the record that the PMB requirements at issue here were a significant part of the overall PWS requirements. In this regard, GLSS proposed [DELETED] FTEs to perform the contract, of which [DELETED] were assigned to the PMB requirements. AR, Tab 16, Revised GLSS Proposal (Mar. 9, 2013), at I-19-I-20. Similarly, B3 proposed [DELETED] to perform the contract, of which [DELETED] were assigned to the PBM requirements. AR, Tab 22, B3 Revised Proposal (June 14, 2013), at I-7.

at 34-38. Finally, WHS contends that PWS part 4.1 was revised by RFP amendment No. 3 in a manner that demonstrates that offerors were not required to propose any particular labor mix; specifically, while the original requirement stated that the contractor “shall furnish all labor, materials and equipment to perform the PWS,” the amended requirement states that the contractor “shall furnish all labor, materials and equipment tailored for each entity’s requirements as required to perform this PWS”. In sum, WHS argues that it is not reasonable to interpret PWS part 1.3, as amended, as requiring the use of warehousemen in light of other PWS provisions that do not mention or expressly limit the work to warehousemen.

Where, as here, a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable an interpretation of a solicitation must be consistent with such a reading. Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 17. An interpretation of solicitation must give reasonable meaning to all provisions and not render any part absurd, surplus or create conflicts. Beechcraft Def. Co., LLC, B-406170.2 et al., June 13, 2013, 2013 CPD ¶ 147 at 30.

We find that GLSS’s interpretation of the RFP is reasonable, and the agency’s interpretation is unreasonable. As discussed above, the PWS, as amended, specifically states that the “purpose of the contract” is to provide warehousemen for the PMB tasks. While the agency notes that no other provisions of the PWS, aside from part 1.3, specifies the use of warehousemen for the PMB requirements, the PWS does not otherwise contradict the statement in RFP amendment No. 3. Put differently, the absence of specific guidance in other parts of the PWS directing offerors to propose warehousemen for the PMB requirements does not demonstrate that the protester’s interpretation of PWS part 1.3, which specified the use of warehousemen for the PMB requirements, is unreasonable. Additionally, we find that the agency’s interpretation of PWS part 1.3 would render meaningless the change made to that provision by RFP amendment No. 3, i.e., the deletion of the word “laborers” from the initial version of the PWS requirement for “laborers and warehousemen.” For this reason, we conclude that the protester’s interpretation of the RFP, rather than the agency’s, gives meaning to the solicitation as a whole, and is therefore reasonable. See Raytheon Co., supra, at 17-18.

WHS nonetheless argues that even if GLSS’s interpretation of the solicitation is reasonable, such an interpretation involves a patent ambiguity, and is therefore an untimely challenge to the terms of the solicitation. We again disagree.

An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. DynCorp Int’l LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle and nonobvious. Ashe Facility Servs., Inc., B-292218.3, B-292218.4,

Mar. 31, 2004, 2004 CPD ¶ 80 at 11. A protest concerning a patent solicitation defect must be challenged prior to the time for award, whereas a latent defect need not be challenged until the agency's interpretation is known. See 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. Here, for the reasons discussed above, we do not find that the RFP contained an ambiguity because the interpretation advanced by WHS is not reasonable. In any event, even if we were to find an ambiguity, we would conclude that it is latent, rather than patent, as the agency's interpretation of the solicitation is not obvious, nor does it involve a gross or glaring error. See Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8; Allied Signal, Inc., Elec. Sys., B-275032, B-275032.2, Jan. 17, 1997, 97-1 CPD ¶ 136 at 11.

In sum, B3's proposal for staffing the PMB was based on performing the work with both laborers and warehousemen. This approach was contrary to PWS part 1.3, which deleted the use of laborers for this purpose, and specified the use of warehousemen. Consequently, we find that the agency improperly waived this requirement for B3, to GLSS's detriment.⁸

⁸ B3, the intervenor here, argues that GLSS's arguments concerning the awardee's failure to provide warehousemen should be viewed as untimely. We disagree. GLSS's initial protest challenged the evaluation of B3's proposal, arguing that, based on its proposed price, the awardee must not have proposed warehousemen at the wage rates required under the collective bargaining agreement. Protest at 8-9. The protester also noted that RFP amendment No. 3 revised PWS part 1.3 to require offerors to provide warehousemen for the PMB requirements. Id. at 4. WHS provided its report on September 17, and provided the documents for its report, including B3's proposal and evaluation, on September 18. The agency's report disclosed that B3 had not proposed warehousemen for the PMB requirements. AR at 16-17. Although the protester's and intervenor's comments were due on Sept. 27, because documents were not provided until September 18, the protester requested, and our Office approved, an extension to file comments on September 30. GLSS filed its additional arguments regarding B3's failure to propose warehousemen in accordance with PWS part 1.3, as amended, on September 30. Unlike the past performance issue discussed above, we conclude that the argument concerning the warehousemen is related to the initial protest grounds, and is therefore timely. See ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 6-7 (argument is not untimely where it provides additional support for an earlier-raised argument).

Saturday Staffing Requirement

Finally, the protester alleges that WHS failed to describe the minimum requirements necessary for award, as evidenced by its material relaxation of a solicitation requirement for B3 without affording GLSS an opportunity to propose to the modified requirements. Specifically, the protester states that during the contract kick-off meeting, the agency announced that B3 would not be required to provide staffing on Saturdays, and further states that immediately thereafter, the agency confirmed that B3 was being allowed to cut [DELETED] more positions from the staffing level set forth in its proposal. See Protester's Comments (Oct. 24, 2013), at 12; Agency Response at 14. The protester further contends that B3 submitted an unrealistically low price for Saturday services, and argues that GLSS, which submitted a higher price, should have been provided an opportunity to submit a proposal based on the agency's revised requirements.⁹ Protester's Comments (Sept. 30, 2013), at 13, 17-18.

Offerors must be treated equally and provided with a common basis for the preparation of their proposals. Systems Mgmt., Inc.; Qualimetrics, Inc., B-287032.3, B-287032.4, Apr. 16, 2001, 2001 CPD ¶ 85 at 8. When, either before or after receipt of proposals, an agency changes or relaxes its requirements, it must issue an amendment to notify all offerors of the changed requirements and give them an opportunity to respond. Diebold, Inc., B-404823, June 2, 2011, 2011 CPD ¶ 117 at 4; Systems Mgmt., Inc.; Qualimetrics, Inc., supra; see Cardkey Sys., B-220660, Feb. 11, 1986, 86-1 CPD ¶ 154 at 2. We will sustain a protest where an agency, without issuing a written amendment, materially alters the solicitation's requirements to the protester's prejudice. See Systems Mgmt., Inc.; Qualimetrics, Inc., supra.

Here, WHS states that the requirements for Saturday service have not been waived or modified. Supp. AR (Oct. 18, 2013) at 15. In this regard, the agency notes that the solicitation allows the agency to suspend the Saturday requirements with 48 hours notice, whenever the Saturday service is not required. See RFP, PWS, at 20. For this reason, we find no basis to sustain the protester's argument that the agency improperly waived a material requirement or otherwise modified the contract. Nonetheless, because the agency suspended the Saturday delivery requirement prior to the start of performance, we recommend, as discussed below, that the

⁹ To the extent GLSS argues that B3 proposed an unrealistically low price that should have been rejected by the agency, this argument fails to state a valid basis because the solicitation did not provide for the evaluation of the realism of offerors' proposed prices. See PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. Instead, the RFP required offerors to propose fixed contract line item prices, and advised that the agency would evaluate offerors' prices for reasonableness and balance. RFP at 108.

agency consider as part of its corrective action whether the solicitation reflects its actual requirements.

CONCLUSION AND RECOMMENDATION

We conclude that WHS's evaluation of B3's proposal under the technical approach and management approach factors was unreasonable with regard to the awardee's proposed staffing for the PMB requirements. We further conclude that GLSS was prejudiced by this error because the agency's tradeoff evaluation considered only B3's and GLSS's proposals in the best value tradeoff, and because B3's lower-rated, lower-priced proposal was found to merit selection over GLSS's higher-rated, higher-priced proposal. AR, Tab 28, Source Selection Decision Document, at 47-51.

We recommend that WHS reevaluate the offerors' proposals with regard to the warehousemen requirement consistent with our decision, and make a new award decision. Alternatively, if the agency believes that its requirements for the PMB can be met by a mix of warehousemen and laborers, the agency should amend the solicitation to reflect its needs, obtain revised proposals, and make a new award decision. In the event that the agency elects to amend the solicitation, we also recommend that the agency reconsider its requirements for Saturday staffing and whether the solicitation requires amendment here as well. If based on the new selection decision, B3 is not selected for award, the agency should terminate B3's contract and make award to the company whose proposal is found to represent the best value.¹⁰

We also recommend that the protester be reimbursed its costs of filing and pursuing its protest concerning the evaluation of the offerors' technical proposals and the selection decision, including reasonable attorney fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing time

¹⁰ WHS advised our Office that it was authorizing performance of the contract, notwithstanding the stay of performance triggered by the protest, based on a finding that performance is in the "best interests" of the government. Email from Agency to GAO, Aug. 9, 2013, at 1. When an agency relies on a "best interests" finding to continue performance of a contract notwithstanding a protest that triggers a stay of performance, the Competition in Contracting Act of 1984 requires that our Office "shall make recommendations under this subsection without regard to any cost or disruption from terminating, recompeting, or reawarding the contract." 31 U.S.C. § 3554(b)(2) (2006); 4 C.F.R. § 21.8(c).

expended and costs incurred, must be submitted directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel