



**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:** Enterprise Information Services, Inc.

**File:** B-407105.3

**Date:** June 10, 2013

---

Alexander J. Brittin, Esq., Brittin Law Group, PLLC; and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for the protester. Major Brent Cotton, Max D. Houtz, Esq., Gregory A. Moritz, Esq., Defense Intelligence Agency, for the agency.

Carl J. Peckinpaugh, Esq., for Computer Sciences Corporation, an intervenor. Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest that agency misevaluated protester's proposal is denied where record shows that the agency reasonably concluded that the proposal offered such inadequate staffing that it should be assessed as technically unacceptable and ineligible for award.

---

### DECISION

Enterprise Information Services, Inc. (EIS), of Vienna, Virginia, protests the issuance of a task order to Computer Sciences Corporation (CSC), of Falls Church, Virginia, by the Defense Intelligence Agency (DIA) under task order request (TOR) No. HHM402-12-R-0087, issued for intelligence analysis support of the ORION Analytical Capability (ORION O<sup>2</sup>) program. EIS argues that the agency improperly evaluated its proposal.

We deny the protest.

### BACKGROUND

The TOR, issued May 15, 2012, under preexisting multiple indefinite-delivery, indefinite-quantity contracts known as the solution of information technology enterprise contracts, contemplates the award of a fixed-price, level-of-effort task order to be performed over a 1-year base period and up to two 1-year option periods. TOR Statement of Objectives (SOO) at 7. The overall requirement is to

ensure that the ORION O<sup>2</sup> program is successfully and seamlessly integrated onto the ORION Data Layer.<sup>1</sup> Id. at 2. Award was to be made on a “best value” basis, considering two evaluation factors, technical/management and price. TOR Instructions, at 1. The technical/management factor was deemed significantly more important than price, but the importance of price in the award decision would increase as the relative differences in technical/management ratings of proposals decreased. Id.

Technical/management proposals were to be rated outstanding, good, acceptable, marginal or unacceptable. The rating was to be based on DIA’s determination of the degree to which the proposal satisfied the requirements of seven equally-weighted subfactors: (1) teamwork; (2) technical capability; (3) innovation and vision; (4) program management; (5) architecture maintenance; (6) comprehensive presence; and (7) past performance. TOR Instructions at 2-3.

This is our second decision in connection with this acquisition. In an earlier decision, Science Applications Int’l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310, we sustained a protest filed by Science Applications International Corporation (SAIC) against the issuance of a task order to CSC, finding that the agency had misevaluated the technical proposal of CSC by not considering the fact that it had proposed a large number of personnel that did not possess security clearances. Id. at 5-10. We also found that, notwithstanding DIA’s arguments to the contrary, the TOR contemplated that DIA would perform a price realism evaluation of proposals, but that DIA failed properly to conduct such an evaluation. Id. at 10-12. We recommended that DIA reevaluate proposals in a manner consistent with the solicitation’s evaluation criteria and make a new source selection decision, terminating the task order issued to CSC if the agency found that another concern was properly in line for award. Id. at 13.

In response to our earlier decision, and as is pertinent here, DIA elected to revise the solicitation’s price evaluation factor. Specifically, by amendment No. 5, the agency made clear that it did not intend to consider price realism in evaluating proposals. Agency Report (AR), exh. 6.9 at 1. In this connection, the agency removed the language from the solicitation that we had interpreted as calling for a price realism evaluation. In addition, the agency added the following sentence: “The realism of proposed prices will not be evaluated.” AR, exh. 6.9, amendment No. 5, at 1.

The offerors were provided an opportunity to submit revised proposals in light of the agency’s amendment of the solicitation’s evaluation scheme. Both CSC and EIS submitted revised proposals. DIA evaluated the proposals and, as is relevant here,

---

<sup>1</sup> The ORION project establishes a high density computing capability and analytical tool for DIA analysts.

noted that EIS had proposed a significant reduction in its proposed staffing, such that the agency questioned EIS's ability to perform the requirement with the level of effort it had offered. As a consequence, the agency reached the following evaluation conclusions with respect to the EIS and CSC proposals:

	<b>EIS</b>	<b>CSC</b>
<b>Technical/Management</b>	Unacceptable	Good
<b>Price</b>	\$58,151,325	\$119,598,408

AR, exh. 11, at 5.

On the basis of these evaluation results, the agency made award to CSC, finding that the firm's proposal represented the best value to the government. After being advised by the agency of its selection decision and requesting and receiving a debriefing, EIS filed the instant protest.

#### EVALUATION OF THE EIS PROPOSAL

EIS raises several challenges to the agency's evaluation of its technical proposal. We have considered all of EIS's allegations and find that none have merit. We note at the outset that, in reviewing protests challenging an agency's evaluation, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. A protester's mere disagreement with the agency's evaluation conclusions does not provide a basis for our Office to object to the evaluation. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 6.

EIS primarily objects to DIA's evaluation of its proposed staffing. In this regard, the record shows that DIA found EIS's proposal deficient under the technical capability and program management subfactors of the technical/management factor, and that these findings led the agency to assign the proposal an overall unacceptable rating. The underlying reason for these findings was the agency's conclusion that EIS proposed inadequate staff to meet the solicitation's requirements. Specifically, under the technical capability subfactor, the evaluators found as follows:

**WHAT:** The EIS approach and understanding of the requirements, challenges and implementation of capabilities within the Orion Analytics is a significant weakness because of the level of staffing they have aligned to each of the technical areas.

**WHY:** EIS's technical staffing is deficient in its capability to accomplish the tasks. Their proposal clearly outlines their understanding of the requirements, associated challenges, [and]

technical expertise, however their technical staffing approach is deficient.

IMPACT/RISK: EIS's proposal puts the Orion Analytics program at significant risk because of their deficiencies in staffing. EIS staffing levels for the base year, option year one, and two pose a significant risk, especially to the tasks associated within the SOO Objective 2 System Enhancement Performance Objectives associated with significant user interface introduction or changes, future capabilities, and new data sources.

AR, exh. 9.1, at 2. Similarly, under the program management subfactor, the evaluators found as follows:

WHAT: EIS does not clearly demonstrate an understanding of the resource needs for Orion Analytics or adequately address staffing through the BOE needed to fulfill the requirements, challenges and implementation of capabilities. This is a significant weakness because of the level of staffing they have aligned to each of the technical areas.

WHY: EIS' technical staffing is deficient in its capability to accomplish the tasks. Their proposal clearly outlines their program management skills, however their technical staffing approach is deficient.

IMPACT/RISK: EIS's proposal puts the Orion Analytics program at significant risk because of their deficiencies in staffing.

Id. at 5.<sup>2</sup>

---

<sup>2</sup> EIS suggests that these findings resulted in DIA identifying “significant weaknesses” rather than “deficiencies” in its proposal. EIS contends that DIA erred in assigning the proposal an overall unacceptable rating, because such a rating could only be assigned where the agency identified proposal deficiencies rather than significant weaknesses. See TOR Instructions at 4. The record shows that the evaluators prepared their evaluation report using a form that required the evaluators to circle or highlight one of five phrases for each subfactor: “significant strength,” “strength,” “meets the standard,” “weakness,” or “significant weakness.” E.g., AR, exh. 9.1 at 1. For the technical capability and program management subfactors, the evaluators highlighted the phrase “significant weakness” because the phrase “deficiency” was not one of the alternatives. Id. at 2, 5. However, it is clear from the evaluators’ narratives, quoted above, that the agency identified deficiencies in the EIS proposal for its inadequate staffing, and not merely significant weaknesses.

EIS argues that, because DIA amended the solicitation to eliminate price realism from the evaluation scheme, it was precluded from evaluating the adequacy of its proposed staffing or the risk posed by its lack of adequate staffing. According to the protester, only where a solicitation specifically provides for the evaluation of price realism is an agency permitted to consider an offeror's technical understanding of the contract requirements or assess the risk inherent in an offeror's proposal. See e.g., Protester's Comments, Apr. 15, 2013, at 17-22.

EIS misunderstands the solicitation's evaluation scheme. While EIS is correct that agencies may use price realism evaluation techniques in the context of a fixed-price contract for the limited purposes of assessing whether an offeror's low price reflects a lack of technical understanding or risk, see FAR § 15.404-1(d)(3), agencies are not confined to evaluating technical understanding or risk exclusively through the use of price realism evaluation techniques. Instead, agencies are free to craft non-price evaluation criteria to take into consideration virtually any aspect of the proposals the agency wishes to evaluate, including, for example, technical understanding and risk that arise as a consequence of inadequate staffing.

Here, the solicitation put offerors on notice that the agency would evaluate their technical proposals to consider the adequacy of their proposed staffing in order to ensure that it reflected an understanding of the requirements.

First, offerors were required to submit with their proposals a non-price basis of estimate (BOE) that detailed their proposed staffing and labor mix. TOR Instructions at 1. As its name indicates, the non-price BOE was to be used by DIA to evaluate the offeror's technical--as opposed to price--proposals. Second, the evaluation criteria contemplated consideration of the adequacy of offerors' proposed staffing to ensure their technical understanding of the agency's requirements. For example, the program management subfactor states: "[T]he Offeror must clearly demonstrate an understanding of the resource needs for ORION 02 and address staffing to include the proper skill mix and labor category through the BOE."<sup>3</sup> AR, exh. 5.5.2, at 2.

---

<sup>3</sup> In its initial protest, EIS also argued that evaluation of the adequacy of its staffing under the technical capability subfactor was improper because the language of that subfactor does not expressly refer to an evaluation of proposed staffing. We disagree. The subfactor calls for offerors to demonstrate their understanding of the work to be undertaken, and thus contemplates consideration of the resources that will be used to perform the requirement. Procuring agencies are not required to specifically list every area that may be taken into account during an evaluation, provided the areas considered are reasonably related to or encompassed by the stated criteria. Raytheon Co., Space and Airborne Sys., B-298626.2, B-298626.3, Sept. 27, 2007, 2007 CPD ¶ 185 at 11. In any event, even if we agreed with EIS's reading, DIA's actions were not prejudicial to EIS because the agency properly

(continued...)

Turning to the technical evaluation itself, our review of the record leads us to conclude that the agency reasonably found the EIS proposal technically unacceptable for failing to propose adequate staffing.

As a threshold matter, we note that EIS does not actually challenge the substance of the agency's findings, but only the agency's ability to make those findings in light of the elimination of price realism from the evaluation scheme. As discussed above, however, we conclude that DIA properly could evaluate offerors' proposed staffing under the technical evaluation criteria.

As noted above, this evaluation was performed as corrective action in response to our prior decision sustaining SAIC's protest. In connection with its corrective action, DIA amended the solicitation and afforded offerors an opportunity to submit revised proposals. The record includes EIS's original proposal, its final proposal revision in response to the earlier competition, and its revised proposal submitted in response to DIA's corrective action amendment. A comparison of EIS's earlier proposals with its proposal responding to the corrective action shows that, in its final proposal, EIS proposed a substantial reduction in its staffing without any explanation.

Specifically, EIS originally proposed [deleted] full time equivalents (FTEs) in both its initial proposal and its earlier final proposal revision. AR, exhs. 6.1, 6.8, attach. A, EIS's non-price BOE. In its revised proposal responding to the agency's corrective action, EIS proposed just [deleted] FTEs. AR, exh. 6.10, attach A, EIS's non-price BOE. The record thus shows that EIS reduced its proposed staffing by more than 60 percent<sup>4</sup> without an explanation. While this reduction allowed EIS to substantially reduce its price (and appears to have been made based on EIS's mistaken belief that, because the agency was not evaluating price realism, it could not otherwise evaluate EIS's proposed staffing) this provided a reasonable basis for the agency to find the EIS proposal technically unacceptable.

In a related matter, the solicitation also includes an optional contract line item for each of the contract's three years of performance that allows the agency to order up to 50 percent more staff from the successful contractor to accommodate surge requirements. These contract line items were not priced in the offerors' proposals, and the solicitation contemplates that the agency will negotiate the quantity and price for any additional staff at the time it exercises the options.

---

(...continued)  
found its staffing deficient--and its proposal unacceptable--under the express language of the program management subfactor quoted above.

<sup>4</sup> EIS's proposal of [deleted] FTEs amounts to a 61.65 percent reduction from the [deleted] FTEs it proposed earlier.

EIS contends that DIA never considered the additional staffing that it could provide through the optional contract line items in concluding that EIS's proposed staffing was deficient. However, EIS's technical proposal--more specifically, its non-price BOE--makes no reference to using staff under the optional contract line items to fulfill the basic requirements. There is no other basis for the agency to have concluded that this additional staffing should be taken into account in evaluating the acceptability of EIS's staffing for the base requirements. Moreover, even if EIS were to augment its proposed staff by 50 percent, this would still only amount to approximately [deleted] FTEs, still far fewer than the [deleted] FTEs offered by EIS in its previous proposal.

EIS raises several additional arguments concerning how the agency assigned strengths in evaluating other aspects of its proposal, and maintains that, if properly considered, these strengths would outweigh the weaknesses found with its proposed staffing. We need not consider these allegations since, as discussed above, DIA properly found the EIS proposal technically unacceptable and therefore ineligible for award, notwithstanding any other strengths found in its proposal.

The protest is denied.

Susan A. Poling  
General Counsel