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Decision

Matter of: Tyonek Worldwide Services, Inc.; DigiFlight, Inc.

File: B-409326; B-409326.2; B-409326.3; B-409326.4; B-409326.5

Date: March 11, 2014

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DIGEST

1. Protests challenging the agency's evaluation of the protesters' proposals as technically unacceptable are denied where the agency reasonably concluded that the protesters' proposals failed to adequately respond to the solicitation's requirements.
 2. Protest alleging that the agency's evaluation of the protester's proposal as technically unacceptable was tantamount to a finding of nonresponsibility is denied where the agency reasonably found the protester's proposal technically unacceptable on the basis of a factor not related to responsibility.
 3. Protest that agency failed to conduct meaningful discussions is denied where the agency's exchanges with offerors were communications that did not permit the offerors to materially revise their proposals.
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DECISION

Tyonek Worldwide Services, Inc., of Anchorage, Alaska, and DigiFlight, Inc., of Huntsville, Alabama, protest the award of a contract to Y-Tech Services, Inc., of Anchorage, Alaska, under request for proposals (RFP) No. W58RGZ-13-R-0030, issued by the Department of the Army, Army Contracting Command, Redstone

Arsenal, Alabama, for aviation maintenance and logistics services. The protesters argue that the Army improperly found their proposals technically unacceptable and ineligible for award. The protesters also challenge numerous other aspects of the Army's evaluation, arguing that the agency failed to treat the offerors' equally, conducted an improper cost evaluation, failed to conduct meaningful discussions, and performed a flawed best value analysis. In addition, Tyonek and DigiFlight protest the Army's evaluation of the awardee's proposal, arguing that the agency's technical, past performance, and cost evaluations of the awardee's proposal were improper. DigiFlight separately asserts that the Army was required to refer its proposal to the Small Business Administration (SBA) for a certificate of competency (COC) determination because its technically unacceptable rating was tantamount to a finding of nonresponsibility. DigiFlight also alleges that Y-Tech made a material misrepresentation in its proposal regarding the availability of Y-Tech's proposed program manager.

We deny the protests.

BACKGROUND

The solicitation, issued on May 15, 2013, as a competitive set-aside under the Small Business Administration 8(a) program, sought aviation maintenance, repair, and logistics services in support of the Aviation Flight Test Directorate, located at the Redstone Test Center, Redstone Arsenal, Alabama. RFP at 2. The RFP anticipated the award of a contract with cost plus fixed-fee, cost-reimbursable, and fixed-price contract line item numbers (CLINs), for a base year, with four 1-year options. Id.

The RFP provided for award on a best-value basis, considering three factors: (1) management/technical; (2) cost/price; and (3) past performance. Id. at 93. The management/technical factor included the evaluation of the following five subfactors: (1) workforce management; (2) technical capability; (3) impromptu task; (4) safety; and (5) transition-in/transition-out. Id.

For purposes of award, the management/technical factor was significantly more important than the cost/price factor, which was slightly more important than the past performance factor. Id. To be considered for award, a proposal was required to receive a rating of at least acceptable for the management/technical factor. Id.

Within the management/technical factor, the workforce management subfactor, technical capability subfactor, and impromptu task subfactor were of equal importance, and individually, were more important than the safety subfactor. Id. The safety subfactor was more important than the transition-in/transition-out subfactor. Id. The solicitation advised offerors that "[t]he Government reserves the right to award at the contractors offered price with or without discussions." Id.

The RFP required that offerors address the management/technical factor, cost/price factor, and past performance factor in three separate written volumes. RFP at 85. As relevant here, the management/technical volume was limited to a maximum of 150 pages; however, the impromptu task subfactor within the management/technical factor was to be presented orally, and therefore, was not to be included in the written submission or page count of the management/technical volume. Id. at 85-86.

For purposes of award under the management/technical factor, the RFP stated that the offerors' proposals would be evaluated as a whole against the entire RFP to include the performance work statement (PWS). Id. at 93. The solicitation also stated that the agency's evaluation of the offerors' proposals would address each subfactor as it applies to the PWS and special provisions. Id. The solicitation encouraged offerors to "address all RFP requirements in their proposal[s] with placement of this information guided by the subfactors." Id. The RFP stated that the overarching evaluation approach for all factors and subfactors was the adequacy and feasibility of the offeror's response.¹ Id. at 94.

As relevant here, under the technical capability subfactor, the solicitation stated that the agency would evaluate the offeror's "corporate commitment to higher level quality requirements, ability to provide a product/service, and capabilities and knowledge that demonstrate an ability to technically control and manage the contract and provide a technically sound product/service." Id. Emphasis would be placed on the following elements: (1) the offeror's certifications or plans to obtain quality certifications; (2) the offeror's experience working with Government material systems; and (3) the offeror's controls (such as cost controls, quality controls) to effectively and efficiently manage the contract. Id.

The Army received seven proposals by the closing date of July 3. Agency Report (AR) at 4. After an initial review of the proposals, the agency sent clarifications to the offerors on July 16. AR at 4-5. The offerors were asked to respond to the clarification questions, but were advised that they would not be permitted to revise

¹ With regard to adequacy, the RFP stated that the proposal would be evaluated "to determine whether the offerors' methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the RFP," and "the extent to which each requirement has been addressed in the proposal in accordance with the proposal submission section of the RFP." RFP at 94. Under feasibility of approach, the solicitation stated that the proposal would be evaluated "to determine the extent to which the proposed approach is workable and the end results achievable"; "the extent to which successful performance is contingent upon proven devices and techniques"; and "the extent to which the offeror is expected to be able to successfully complete the proposed tasks and technical requirements." Id.

their proposals. See AR, Tab 106, DigiFlight Clarifications Email, at 1; Tab 70, Tyonek Clarifications Email, at 1. Both Tyonek and DigiFlight submitted responses to their clarification questions. AR, Tab 109, DigiFlight Clarifications Response, at 1-11; Tab 73, Tyonek Clarifications Response, at 1-7. The impromptu task presentations were held on July 22 and July 25, for all offerors. AR at 5.

The Army evaluated the offerors' written proposals and responses to the impromptu task. The results of the Army's evaluation of the protesters' and awardee's proposals were as follows:²

	TYONEK	DIGIFLIGHT	Y-TECH
Management/Technical	Unacceptable	Unacceptable	Outstanding
Workforce Mgmt.	Unacceptable	Unacceptable	Good
Tech. Capability	Unacceptable	Unacceptable	Outstanding
Impromptu Task	Unacceptable	Acceptable	Outstanding
Safety	Good	Unacceptable	Outstanding
Transition-In/Out	Unacceptable	Acceptable	Good
Total Evaluated Price	\$86,449,341	\$98,316,331	\$87,679,090
Past Performance	VR/Satisfactory	VR/Limited	VR/Satisfactory

AR, Tab 145, Source Selection Decision Document (SSDD), at 3.

Evaluation of Tyonek

The Army found Tyonek's proposal unacceptable under four of the technical subfactors: workforce management, technical capability, impromptu task, and transition-in/transition-out. Id. Under the workforce management subfactor, the Army assigned two strengths, one weakness, and one deficiency to Tyonek's proposal. Id. at 5. The deficiency was based on the failure of Tyonek's proposal to propose a safety manager with the required number of years of Army aviation safety experience, as required by the PWS. Id.

The agency also rated Tyonek's proposal unacceptable under the technical capability subfactor, assessing Tyonek's proposal with four weaknesses, two

² The technical evaluation team assessed the technical proposals as outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 145, SSDD, at 3. The agency assessed the past performance proposals based on the following: (1) relevancy, as very relevant (VR), somewhat relevant (SR), or relevant (R); and (2) confidence, as substantial, satisfactory, or limited. Id.

significant weaknesses, and five deficiencies. Id. at 7-8. With regard to the five deficiencies, the agency found that Tyonek's proposal: (1) did not explain how the contractor will perform the installation and removal of prototype equipment; (2) did not address or provide a method or approach to adequately address the PWS forecast material and service requirements; (3) did not explain the offeror's process for performing temporary non-standard modifications; (4) did not explain Tyonek's process for performing validation and verifications; and (5) did not adequately address the PWS requirements for commercial off the shelf (COTS) equipment. Id.

Under the impromptu task subfactor, Tyonek received an unacceptable rating based on Tyonek's failure to "provide an understanding of the requirements" and because Tyonek "missed most aspects of the task." Id. at 11. The agency stated that some of the problems with Tyonek's response included the following:

poor assumptions of key or missing information, an incomplete understanding of technical manuals and specifications, a scarce plan that was contradictory and did not follow [the problem, plan, people, parts; time, tools, training (P4T3) report], an incorrect and incomplete mention of personnel and skill sets, no mention of specific parts for the task, no specific timeline was addressed, a vague list of tools, and no mention of training opportunities, recommendations/procedures.

Id.

Finally, the Army also found Tyonek's proposal unacceptable under the transition-in/transition-out subfactor. Under this subfactor, the agency assessed three significant weaknesses and one deficiency to Tyonek's proposal. Id. at 15. The deficiency was based on the failure of Tyonek's proposal to provide a detailed transition plan, as required by the RFP and PWS. Id.

Evaluation of DigiFlight

DigiFlight received an unacceptable rating under three of the technical subfactors: workforce management, technical capability, and safety. Id. at 3. Under the workforce management subfactor, the Army found DigiFlight's proposal unacceptable based on one deficiency. The deficiency was based on DigiFlight's failure to propose a safety manager with the required number of years of Army aviation safety experience, as required by the PWS. Id.

Under the technical capability subfactor, the Army assigned DigiFlight's proposal two strengths, two weaknesses, one significant weakness, and eight deficiencies. Id. at 8. The Army concluded that DigiFlight's proposal was unacceptable under

this subfactor, and explained that the deficiencies were based on the failure of DigiFlight's proposal to address numerous PWS requirements.³ Id. at 8.

Under the safety subfactor, DigiFlight received one significant weakness and one deficiency, and therefore, the Agency found DigiFlight's proposal unacceptable. Id. at 14. The evaluators stated that DigiFlight's proposal "fail[ed] to provide details for a safety plan or [flight operating/ground operating] procedures" and "simply provid[ed] a statement of intent to comply with and utilize the current safety program." Id. The agency found that "DigiFlight's lack of a safety program in their proposal is a material failure of the proposal to meet a Government requirement that increases the risk of unsuccessful contract performance to an unacceptable level" and that the "[p]roposal is unawardable." Id.

Award Decision

The agency concluded that Tyonek and DigiFlight were unacceptable under the management/technical factor and therefore ineligible for award. Id. at 18. The agency also found that three of the other offerors' proposals were ineligible for award. Id. Two offerors remained in the competition, however, and the agency decided to award without discussions. Id. at 18-19. On November 25, the Army awarded the contract to Y-Tech. Both Tyonek and DigiFlight requested debriefings, which they received on December 3 and 4, respectively. AR at 5. These protests followed.

DISCUSSION

The protesters argue that the Army improperly found their proposals technically unacceptable and ineligible for award. The protesters also raise numerous other challenges regarding the Army's technical and cost evaluation of the protesters' proposals, and contend that the agency failed to conduct meaningful discussions, or alternatively, abused its discretion in failing to conduct discussions. The protesters

³ For example, the evaluators stated that DigiFlight's proposal: failed to address non-destructive inspection, sheet metal and composite, machine and welding, aircraft armament, and propeller and rotor services; failed to address avionics and electrical, engine repair, hydraulic repair, paint, fabric and upholstery and instrumentation services; failed to address modification work orders, associated maintenance and modification work order kits, aircraft data installation and loading, crash damaged aircraft, preparation for shipment (aircraft), corrosion control program and condition based maintenance; failed to address preservation and de-preservation in accordance with mission, design, series and platform specific technical manuals; and failed to address draft modification work orders, ballast/water ballast tanks, configuration and control of equipment and limited depot level repair support. AR, Tab 145, SSDD, at 8.

also assert that the agency's best value tradeoff analysis was flawed. In addition, Tyonek and DigiFlight protest the Army's evaluation of the awardee's proposal, arguing that the agency's technical, past performance, and cost evaluations of the awardee's proposal were improper. DigiFlight separately contends that Y-Tech made a material misrepresentation in its proposal regarding the availability of Y-Tech's proposed program manager. DigiFlight also asserts that the Army was required to refer its proposal to the SBA for a COC determination because its technically unacceptable rating was tantamount to a finding of nonresponsibility.

For the reasons discussed below, we conclude that the agency reasonably evaluated the protesters' proposals as technically unacceptable and ineligible for award. Since we find that the Army's evaluation was reasonable in this regard, Tyonek and DigiFlight are not interested parties to challenge the evaluation and award to Y-Tech.⁴ Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2014); see SWR, Inc., B-284710.2, Nov. 15, 2000, 2000 CPD ¶ 206 at 4 n.1 (where there is another acceptable proposal eligible for award, a protester is not an interested party where it would not be in line for award were its protest sustained). With regard to the remaining protest grounds, we have considered all of the protesters' arguments, and find that none provides a basis to sustain the protests.

Technical Evaluation

Both Tyonek and DigiFlight challenge the Army's evaluation of their proposals as unacceptable under the management/technical factor, which per the terms of the RFP, rendered their proposals ineligible for award. Specifically, Tyonek argues that the Army improperly found its proposal unacceptable under the following four technical subfactors: workforce management, technical capability, impromptu task, and transition-in/transition-out. DigiFlight asserts that the agency improperly found its proposal unacceptable under the following three technical subfactors: workforce management, technical capability, and safety. As discussed below, we have reviewed each of the protesters' allegations and conclude that the Army reasonably evaluated Tyonek's and DigiFlight's proposals technically unacceptable under the technical capability subfactor, and therefore, ineligible for award.⁵

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's

⁴ The record reflects that, in addition to Y-Tech's proposal, there was another acceptable proposal eligible for award. AR, Tab 145, SSDD, at 3.

⁵ Because, as discussed below, the RFP required offerors to receive a rating of at least acceptable under the technical/management factor to be considered for award, we need not address the protesters' arguments challenging the agency's evaluation of their proposals under the other technical subfactors.

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. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Tyonek's Technical Evaluation

Tyonek challenges the deficiencies its proposal received under the technical capability subfactor, arguing that the Army's evaluation was unreasonable because the agency either overlooked information that was included in its proposal or evaluated its proposal based on information not required by the RFP. The agency asserts that its assessment of the deficiencies was reasonable because the proposal either merely parroted the PWS requirements, without adequately explaining how the offeror would perform the requirement, or simply failed to include the information, as required by the solicitation. As discussed below, we conclude that the Army reasonably evaluated Tyonek's proposal under the technical capability subfactor, and therefore, was reasonable in finding Tyonek's proposal ineligible for award.

As discussed above, to be considered for award, the solicitation stated that a proposal was required to receive a rating of at least acceptable for the management/technical factor. RFP at 93. The agency defined "unacceptable" as "proposal does not meet requirements and contains one or more deficiencies" and the "[p]roposal is unawardable." AR, Tab 143, Source Selection Plan, at 30. A deficiency was defined as "[a] material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." Id. at 31.

The Army assessed five deficiencies to Tyonek's proposal under the technical capability subfactor. AR, Tab 145, SSDD, at 7-8. All of these deficiencies were based on the failure of Tyonek's proposal to adequately explain or address Tyonek's process for performing specific PWS requirements. For example, the Army assessed a deficiency for Tyonek's failure to provide an adequate response to PWS § 3.4.5.12.1 (Temporary Non-Standard Modifications). This portion of the solicitation required that offerors demonstrate their approach to "[c]omply and conform with marking, safety, and configuration control practices for temporary non-standard modifications on DOD [Department of Defense] owned aerospace vehicles, and related support equipment in support of research, development, test and evaluation IAW [in accordance with] MIL-STD-27733 when directed by the COR

[contracting officer's representative] or designee and prepare documentation IAW DI-MISC-81562 (A030)." RFP, PWS, at 35-36.

In response to this PWS requirement, Tyonek's proposal stated the following:

3.4.10.5.10.1 Temporary Non-Standard Modifications
(PWS 3.4.5.12.1)

Tyonek complies with marking, safety, and configuration control practices for temporary non-standard IAW MIL-STD-27733 and will prepare documentation IAW DI-MISC-81562 (CDRL A030).

AR, Tab 36, Tyonek Technical Proposal, at 117.

The agency found that Tyonek's proposal "does not explain the offeror's process for performing temporary non-standard modifications." AR, Tab 145, SSDD, at 8. The agency stated that Tyonek's proposal "parrots the requirements of the PWS with a statement of intent to perform which does not reflect an understanding of the requirement or demonstrate an ability or capability to perform." AR, Tab 74, Technical Evaluation-Tyonek, at 6.

Tyonek argues that the agency's assessment of this deficiency was unreasonable and that its proposal adequately complied with the PWS requirements for marking safety, and configuration control practices for temporary non-standard modifications. Tyonek argues that its response to this specific PWS requirement, cited above, as well as its reference to temporary non-standard modifications in another portion of its proposal (PWS § 3.4.4 Aviation Maintenance Support Process) should have satisfied the requirement. Tyonek also asserts that the PWS requirement was "vague" because it failed to provide specific information, such as the type of aircraft, time frame of the mission, and hours that will be flown, and that this additional information was necessary to provide the detailed response expected by the agency.

The Army responds that Tyonek's proposal did not provide any reference to its approach or method for addressing temporary non-standard modifications. The Army disagrees that the PWS requirement was vague, as Tyonek asserts, and explains that compliance with the requirement was not dependant on variances, such as mission, hours, or aircraft. AR at 16. In this regard, the agency states that an adequate process to address the PWS requirement can be applied successfully and repeatedly regardless of the mission, flight hours, or aircraft type. AR at 17. The agency argues that Tyonek's failure to adequately address the requirement in its proposal, and not the lack of detail in the PWS, was the basis for Tyonek's rating. On this record, we conclude that the agency reasonably assessed a deficiency to Tyonek's proposal for its failure to adequately address this requirement. It is an offeror's obligation to submit an adequately-written proposal for the agency to

evaluate. Agile Def., Inc., B-408029, B-408029.2, May 31, 2013, 2013 CPD ¶ 159 at 6.

As another example, the Army assessed a deficiency to Tyonek's proposal based on Tyonek's failure to provide an adequate response to PWS § 3.4.5.16 (Validation and Verification of Technical Feasibility). AR, Tab 145, SSDD, at 8. This portion of the RFP required that offerors demonstrate their approach to "[v]erify the technical feasibility of draft, [safety of flight], [aviation safety action messages], Aviation Maintenance Action Message[s], Maintenance Procedures, or [modification work orders] when directed by the [contracting officer's representative] or designee." RFP, PWS at 36. In response to this requirement, Tyonek's proposal stated the following:

3.4.10.5.14 Validation and Verification of Technical Feasibility of Draft [safety of flight], [aviation safety action messages], Maintenance Procedures, or approved [modification work orders]. (3.4.5.16)

Tyonek will verify the technical feasibility of draft [safety of flight], [aviation safety action messages], Aviation Maintenance Action Message[s], Maintenance Procedures, or [modification work orders].

AR, Tab 36, Tyonek Technical Proposal, at 118.

The agency found that Tyonek's proposal "does not explain the process for performing Validation and Verifications." AR, Tab 145, SSDD, at 8. The agency stated that Tyonek's proposal "parrots the requirements of the PWS with a statement of intent to perform which does not reflect an understanding of the requirement or demonstrate an ability or capability to perform." AR, Tab 74, Technical Evaluation-Tyonek, at 6.

Tyonek argues that the above quoted statement in its proposal adequately addressed the PWS requirement. Tyonek Comments (Jan. 23, 2014), at 56-57. Tyonek also cites to two other paragraphs in its proposal that it contends described its process for validation and verification. The Army responds that nothing in Tyonek's proposal, including the two cited paragraphs, addresses Tyonek's process for this requirement, and therefore, argues that the agency's assessment of a deficiency was reasonable. AR at 17.

Based on this record, we find nothing unreasonable regarding the agency's evaluation. To the extent Tyonek contends that its proposal submission was adequate, the protester's disagreement with the agency's evaluation provides no basis to sustain the protest. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

DigiFlight's Technical Evaluation

DigiFlight argues that the Army's evaluation of its technical proposal as unacceptable under the management/technical factor was unreasonable. Specifically, DigiFlight challenges numerous weaknesses, significant weaknesses, and deficiencies assessed to its proposal. In this regard, DigiFlight argues that the Army applied an unstated evaluation criterion in its technical evaluation which contributed to the agency unreasonably assessing numerous deficiencies in DigiFlight's technical proposal. As discussed below, we find that the Army reasonably evaluated DigiFlight's proposal under the technical capability subfactor, in accordance with the solicitation.

The Army assessed eight deficiencies to DigiFlight's proposal under the technical capability subfactor. AR, Tab 145, SSDD, at 8. Six of these deficiencies resulted from the failure of DigiFlight's proposal to address numerous PWS requirements.⁶ DigiFlight concedes that its proposal failed to address these PWS requirements. DigiFlight Protest, Appendix. DigiFlight argues, however, that the RFP did not inform the offerors that these areas of the PWS needed to be addressed in the proposal. Id.

The RFP stated that the offerors' proposals would be evaluated as a whole against the entire RFP to include the performance work statement (PWS). Id. at 93. The solicitation also stated that the agency's evaluation of the offerors' proposals would address each subfactor as it applies to the PWS and special provisions. Id. In evaluating DigiFlight's proposal, the evaluators assessed the deficiencies based on the failure of DigiFlight's proposal to respond to groups of PWS sections. For example, DigiFlight received a deficiency for not addressing PWS § 3.4.3.1.1 through PWS § 3.4.3.1.5, regarding the repair services station. AR, Tab 145, SSDD, at 8; Tab 110, Technical Evaluation-DigiFlight, at 4. These PWS requirements involved non-destructive inspection (NDI) services; sheet metal and composite services; machine and welding services; aircraft armament services; and propeller and rotor services. The agency stated that these requirements involve

⁶ Specifically, the Army found that DigiFlight failed to address the following PWS requirements: 3.4.3.1 (Non-Destructive Inspection (NDI) Services); 3.4.3.1.2 (Sheet Metal and Composite Services); 3.4.3.1.3 (Machine and Welding Services); 3.4.3.1.4 (Aircraft Armament Services); 3.4.3.1.5 (Propeller and Rotor Services); 3.4.3.1.6 (Avionics and Electrical Services); 3.4.3.1.7 (Engine Repair Services); 3.4.3.1.8 (Hydraulic Repair Services); 3.4.3.1.9 (Paint, Fabric, and Upholstery Services); 3.4.3.1.10 (Instrumentation Services); 3.4.4.7 (Maintenance Work Order (MWO), Associated Maintenance, and MWO Kits); 3.4.4.8 (Aircraft Data Installation and Loading); 3.4.4.11 (Damaged, Crash-Damaged Aircraft Repair, and Off Site Modification); 3.4.4.13 (Preparation for Shipment); 3.4.5.1 (Draft MWOs); 3.4.5.2 (Ballast/Water Ballast Tanks); 3.4.5.3 (Configuration and Control of Equipment); and 3.4.5.5 (Limited Depot Level Repair Support). AR, Tab 145, SSDD, at 8.

“the back shops operations where parts are routed for repair and overhaul, and then sent back to the hanger maintenance technician” and that these back shops are “paramount in providing the maintenance support required to sustain the aircraft maintenance posture for test schedule and flight missions.” Id.

Based upon our review of the solicitation, we conclude that the agency did not evaluate DigiFlight’s proposal based upon an undisclosed evaluation criterion. Rather, the agency’s evaluation of DigiFlight’s proposal reasonably assessed deficiencies based upon the requirements of the solicitation. While the RFP may not have identified each of the PWS sections independently, the offerors were on notice that their proposals were being evaluated based on the requirements in both the RFP and PWS. We conclude that the agency’s evaluation was reasonable and in accordance with the solicitation.

Next, DigiFlight argues that the Army’s evaluation of DigiFlight’s proposal under the management/technical factor as unacceptable was tantamount to a finding of nonresponsibility, and that the agency was required to refer the matter to the SBA for a certificate of competency determination.

Where an agency finds the proposal of a small business to be unacceptable under a responsibility-related factor, that is, a factor pertaining to its ability to perform, such as whether it has adequate corporate experience or production equipment and facilities, the determination is essentially one of nonresponsibility, meaning that referral to the SBA, which has the ultimate authority to determine the responsibility of small business concerns, is required. Joanell Labs., Inc.; Nu-Way Mfg. Co., Inc., B-242415.8 et al., Apr. 15, 1992, 92-1 CPD ¶ 369 at 6; Sanford & Sons Co., B-231607, Sept. 20, 1988, 88-2 CPD ¶ 266 at 2-3. Where an agency rejects a proposal as technically unacceptable on the basis of factors not related to responsibility, as well as responsibility-related ones, referral to the SBA, however, is not required. Paragon Dynamics, Inc., B-251280, Mar. 19, 1993, 93-1 CPD ¶ 248 at 4.

DigiFlight argues that the technical capability subfactor is related to responsibility because the criteria of the technical capabilities subfactor are, essentially, traditional responsibility factors. The agency disagrees, and asserts that the technical capability subfactor concerns an offeror’s proposed technical approach, not an offeror’s ability to do the work. AR at 40.

As discussed above, under the technical capability subfactor, the RFP stated that the agency would evaluate, among other things, an offeror’s “knowledge[] that demonstrate[s] an ability to technically control and manage the contract and provide a technically sound product/service,” as well as “the extent to which the proposed approach is workable and the end results achievable.” RFP at 94. The record also reflects, as discussed above, that the agency’s finding that DigiFlight’s proposal was technically unacceptable under the technical capabilities subfactor was based upon

DigiFlight's failure to adequately explain or demonstrate its approach to numerous PWS requirements. AR, Tab 110, Technical Evaluation-DigiFlight, at 4-7. Thus, while "technical capabilities" may relate to responsibility in certain instances, the Army here evaluated DigiFlight's technical approach, not its ability to perform. Accordingly, referral to the SBA was not required.⁷

Discussions

Next, DigiFlight argues that the clarification notices provided to the offerors actually constituted discussions, but that the discussions were not meaningful because the agency failed to advise DigiFlight of the deficiencies and significant weaknesses identified in DigiFlight's proposal.⁸ DigiFlight Protest at 12-13. Specifically, DigiFlight points to one clarification question, which it believes constitutes discussions. DigiFlight Protest at 13-15. This question related to the RFP's requirement that offerors must propose "between a 2% minimum and 5% maximum fee on material." RFP at 95. The Army's clarification question to DigiFlight stated that the agency was "unable to determine if the 2% minimum fee requirement was met because the spreadsheet disclosed [DELETED]% in the 'Proposed Fee' column." AR, Tab 109, DigiFlight Clarifications, CPD-0005, at 3. Accordingly, the Army asked DigiFlight to clarify, "[w]here in the proposal submission is the cited material fee requirement met?" Id.

⁷ As mentioned in the background section above, the Army also found DigiFlight's proposal unacceptable under two of the other technical subfactors: workforce management and safety. AR, Tab 145, SSDD, at 3. DigiFlight contends that the Army's evaluation of DigiFlight's proposal as unacceptable under the workforce management subfactor and safety subfactor also were tantamount to findings of nonresponsibility that should have been referred to the SBA. Because we conclude that the Army reasonably found DigiFlight's proposal technically unacceptable on the basis of the technical capabilities subfactor--a subfactor not solely related to responsibility--we need not address DigiFlight's arguments concerning the workforce management and safety subfactors. Light-Pod, Inc., B-401739, B-401739.2, Nov. 12, 2009, 2009 CPD ¶ 238 at 5 (referral to SBA not required where agency rejects proposal as technically unacceptable on the basis of factors not related to responsibility as well as responsibility-related ones).

⁸ In its initial protest, Tyonek also argued that several of the clarification questions provided to Tyonek constituted discussions, which were not meaningful. Tyonek Protest at 61. Tyonek, however, did not further discuss this contention in its comments responding to the agency report, and we therefore deem this issue abandoned. See International Mgmt. & Commc'ns Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 2-3 n.2.

In response to the question, DigiFlight explained that its initial proposal did not include [DELETED] as required by the RFP. DigiFlight Protest at 13; AR, Tab 109, DigiFlight Clarifications, CPD-0005, at 3. DigiFlight offered, however, to provide the [DELETED], stating: “[I]n accordance with the RFP and Questions document, Team DigiFlight has proposed [DELETED]. This addition is highlighted in Column F and Column G, Tab ‘Material & Non-Material’ within our revised submission” DigiFlight Protest, Exh. 5, DigiFlight Declaration (Dec. 6, 2013), at 2. DigiFlight argues that the Army accepted its revised offer, thereby opening discussions. DigiFlight Protest at 13-14. The Army responds that, although DigiFlight responded to the clarification question by offering a [DELETED]% fee, the contracting officer did not accept DigiFlight’s revised offer. AR at 7. Instead, the contracting officer redacted DigiFlight’s response, and it was never seen by the evaluators. *Id.* The agency argues therefore that it did not hold discussions, but instead, issued clarifications to the offerors, which did not provide the offerors with the opportunity to revise their proposals. As discussed below, we conclude that the Army’s exchanges with DigiFlight did not constitute discussions.

Clarifications are limited exchanges between an agency and an offeror for the purpose of clarifying certain aspects of a proposal, and do not give an offeror the opportunity to revise or modify its proposal. Federal Acquisition Regulation (FAR) § 15.306(a)(2); Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 12. Discussions, on the other hand, occur when a contracting officer communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11; Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; see FAR § 15.306(d). When conducting discussions, agencies must identify, at a minimum, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR § 15.306(d)(3).

Where, like here, there is a dispute regarding whether exchanges between an agency and an offeror constituted discussions, we look at whether an offeror has been afforded an opportunity to revise or modify its proposal. Booz Allen Hamilton, Inc., supra, at 12. Communications that do not permit an offeror to revise or modify its proposal, but rather permit the offeror to explain or clarify what the offeror has already proposed to do, are clarifications and not discussions. Allied Tech. Grp., Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6; SRS Techs., B-291618.2, B-291618.3, Feb. 24, 2003, 2003 CPD ¶ 70 at 3 n.4.

Based on our review of the record, we find no support for DigiFlight’s argument that it was permitted to revise or modify its proposal. As stated above, the agency explains that the contracting officer did not accept DigiFlight’s proposal to provide the [DELETED], and DigiFlight’s revised offer was not considered by the evaluators.

AR at 7. The Army's clarification question and response document supports the agency's position. This document stated: "Offeror's response redacted by Government." AR, Tab 109, DigiFlight Clarifications, CPD-0005, at 3. It further stated the following:

Offeror's response is not considered adequate. Per Section M-2, Paragraph C.3.a.(4) (Page 95) "Offerors shall propose between a 2% minimum and a 5% maximum fee on material." Offeror proposed a fee of [DELETED]% which does not comply with the RFP requirement. The fee in Material & Non-material should be [DELETED].

Id.

DigiFlight does not cite to, nor can we find, anything in the record that indicates that the Army permitted DigiFlight to revise its proposal in the manner it asserts, or that its proposal was evaluated on that basis. In addition, the record reflects that the agency advised the offerors that they would not be permitted to revise their proposals in response to the questions, and that any such attempts would be rejected. See e.g., AR, Tab 106, DigiFlight Clarifications Email (July 16, 2013), at 1 ("Remember, clarifications shall not provide an opportunity for the offeror to revise its proposal. Revisions to your proposal will be removed or not read and will not be evaluated by the Government."); Tab 107, Digiflight Clarifications Letter, at 1 (stating that "responses are very limited" and "[s]hould you submit information that in the Government's opinion materially changes the proposal, the new information will not be included in the proposal and will not be reviewed"). The Army's clarification question merely asked DigiFlight to identify within its proposal where it offered the required fee; it did not present an opportunity for DigiFlight to modify or revise its proposal. This exchange did not constitute discussions as alleged by DigiFlight.

In the alternative, DigiFlight argues that the Army abused its discretion by failing to hold discussions with the offerors. DigiFlight Protest at 17. The solicitation, however, expressly advised that the agency contemplated making award without discussions. RFP at 96. An agency's decision not to initiate discussions is a matter

we generally will not review.⁹ See Booz Allen Hamilton, Inc., supra, at 10. Accordingly, we find no basis to sustain the protest.

The protests are denied.

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General Counsel

⁹ DigiFlight also contends that Defense Federal Acquisition Regulation (DFARS) § 215.306 required the Army to conduct discussions because it states that, “[f]or acquisitions with an estimated value of \$100 million or more, contracting officers should conduct discussions.” DigiFlight Protest at 19. The agency responds that the government estimate for the value of the procurement was below \$100 million. AR at 10. In addition, the record reflects that the agency did not receive any acceptable proposals that were \$100 million or more. AR, Tab 145, SSDD, at 3. On this record, we find reasonable the agency’s determination that the acquisition was valued at under \$100 million, and that DFARS § 215.306 was not applicable, here.