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**Comptroller General  
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**United States Government Accountability Office  
Washington, DC 20548**

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# Decision

**Matter of:** CORTEK, Inc.

**File:** B-412047; B-412047.2; B-412047.3

**Date:** December 17, 2015

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Richard B. O’Keeffe, Jr., Esq., and William A. Roberts, III, Esq., Wiley Rein LLP, for the protester.

Kenneth B. Weckstein, Esq., and Tammy Hopkins, Esq., Brown Rudnick LLP, for Engineering Support Personnel, Inc., an intervenor.

Suzanne M. Steffen, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging agency’s evaluation of awardee’s proposal is sustained where record shows that awardee’s proposal failed to comply with several material solicitation requirements.

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## DECISION

CORTEK, Inc., of Fredericksburg, Virginia, protests the award of a contract to Engineering Support Personnel, Inc. (ESP), of Orlando, Florida, under request for proposals (RFP) No. N00189-15-R-Z016, issued by the Department of the Navy for various instructor services to be performed at the Navy’s Air Logistics Training Center in Fort Worth, Texas. CORTEK maintains that the agency miscalculated proposals, treated offerors disparately, failed to engage in meaningful discussions, and made an unreasonable source selection decision.

We sustain the protest.

## BACKGROUND

The RFP contemplates the award, on a best-value basis, of a fixed-price contract for a base year and four 1-year option periods to provide training for pilots, flight engineers, maintenance personnel and aircrews, along with training for operations and administration personnel, in connection with the operation and maintenance of the agency’s C-130T and C-9B fleet of aircraft. RFP at 36. Proposals were to be

evaluated considering price and three non-price factors: management approach, corporate experience, and past performance. RFP at 118. The RFP specified that management approach was the most important factor, corporate experience and past performance were equally weighted but less important than management approach, and the non-price factors were more important than price. Id. The RFP advised offerors that proposals had to be rated at least acceptable under each evaluation factor in order to be considered for award. Id.

The agency received several proposals in response to the solicitation. After evaluating those proposals, the agency established a competitive range comprised of the protester and ESP, and engaged in discussions with both firms. The agency evaluated final proposal revisions (FPRs) and assigned the following ratings:

	<b>Management Approach</b>	<b>Corporate Experience</b>	<b>Past Performance</b>	<b>Overall Non-Price</b>	<b>Price</b>
CORTEK	Good	Outstanding	Substantial Confidence	Good	\$11,744,598
ESP	Acceptable	Acceptable	Satisfactory Confidence	Acceptable	\$9,878,880

Agency Report (AR), exh. 27, Source Selection Decision Document at 2.

On the basis of these evaluation results, the agency made award to ESP, concluding that the firm’s proposal represented the best value to the government based on its lower proposed price, notwithstanding the technical superiority of the CORTEK proposal. Id. at 5-6. After being advised of the agency’s selection decision and requesting and receiving a debriefing, CORTEK filed this protest.

## PROTEST

CORTEK raises numerous challenges to the agency’s evaluation of ESP’s proposal. Specifically, CORTEK alleges that the agency improperly found ESP’s proposed staffing acceptable, despite the fact that certain of its personnel did not meet the RFP’s qualification requirements; improperly allowed ESP to exceed the page limitation for its proposal, and improperly evaluated material outside of that page limitation; improperly evaluated a past performance/corporate experience example that was performed outside of the RFP’s 5-year period of consideration; and unreasonably found the ESP transition plan acceptable. CORTEK also alleges that the agency improperly failed to downgrade the ESP proposal for offering to recruit all of CORTEK’s incumbent personnel, despite the fact that the agency knew, based on CORTEK’s proposal, that it had exclusive employment agreements with its employees, and also that the agency failed to engage in meaningful discussions.

We have carefully considered all of CORTEK's protest allegations and sustain its protest in part and deny it in part. We discuss CORTEK's principal contentions below; to the extent we do not specifically discuss an allegation it is denied. We note at the outset that, in reviewing protests concerning an agency's evaluation of proposals, we do not independently review proposals; rather, we review the record to ensure that an agency's evaluation is reasonable and consistent with the terms of the solicitation, as well as applicable statutes and regulations. Intelligent Decisions, Inc., et al., B-409686 et al., July 15, 2014, 2014 CPD ¶ 213 at 15-16. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, inadequately documented, or not reasonably based. Id.

### Contents of the Agency Report

As a preliminary matter, we note that the Navy prepared an extensively redacted report that included only selected documents and, within those selected documents, only very circumscribed portions thereof. The Navy's document production resulted in a protracted, piecemeal presentation by CORTEK of its protest allegations, and ultimately generated a record that was far from fulsome or adequate. For example, the agency did not produce materials sufficient to explain some of the most basic details of the acquisition, such as the adjectival rating scheme used to evaluate proposals. In other instances, the agency's response to certain allegations (discussed below) was so lacking in information that we were unable to assess the reasonableness of the agency's actions.

While our Bid Protest Regulations, 4 C.F.R. § 21.3(d), only require agencies to produce documents in response to a protest that are relevant to the allegations raised, an agency's overly aggressive efforts to limit document production can, as here, frustrate the mandate of the Competition in Contracting Act, 31 U.S.C. §§ 3551-3556, for our Office to resolve bid protests. See Johnson Controls World Services, Inc.--Costs, B-295529.4, Aug. 19, 2005, 2005 CPD ¶ 162 at 8. As discussed below, without an adequate record, we cannot conclude that the agency's actions were reasonable.

### ESP's Proposed Staffing Approach

CORTEK alleges that the agency unreasonably assigned the ESP proposal an acceptable rating under the management factor, the most important factor. The protester notes that ESP's proposed staffing approach involved [deleted] AR, exh. 13, ESP Technical Proposal, at 10. CORTEK asserts that this approach is not acceptable under the terms of the RFP because the aircraft maintenance instructors are required to have a minimum of 8 years of experience performing maintenance on C-130 or C-9B aircraft, as appropriate. RFP at 53. CORTEK specifically points out that ESP's maintenance instructors are described in the ESP proposal as

having only 3 years of aircraft maintenance experience. AR, exh. 30, ESP Technical Proposal, at 7.

The agency responds that this specific information was not dispositive of the experience issue because the ESP proposal included a blanket representation that its proposed personnel would meet all of the solicitation's personnel qualifications requirements. AR, exh. 30, ESP Technical Proposal, at 5. The agency also notes that the RFP did not require that offerors include position descriptions or resumes with their proposals. The agency therefore reasons that it was unobjectionable to accept the ESP proposal.

We sustain this aspect of CORTEK's protest. It is undisputed that the RFP required offerors to propose maintenance instructors that had a minimum of 8 years of experience performing aircraft maintenance on either C-130 or C-9B aircraft, as appropriate. CORTEK also is correct that the ESP proposal expressly provides that its maintenance instructor personnel only have 3 years of experience performing aircraft maintenance. AR, exh. 30, ESP Technical Proposal, at 7. Where, as here, a proposal fails to conform to one or more material requirements of the RFP, it is unacceptable and may not form the basis for the award of a contract. Strand Hunt Construction, Inc., B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 5.

We also find no merit to the agency's position that it could rely on the blanket representation in the proposal that all of ESP's personnel would meet the solicitation's requirements because offerors were not required to include position descriptions or resumes in their proposals. The fact that the RFP did not require the submission of position descriptions or resumes does not mean that the agency simply could ignore the actual contents of the ESP proposal. As noted, the ESP proposal included an express deviation from the solicitation's 8-year experience requirement for maintenance instructors, describing its proposed aircraft maintenance instructors as follows: "3 years of experience as a C-130 and or C-9B I-Level technician and certified Micro Min as required." AR, exh. 30, ESP Technical Proposal, at 7.

CORTEK also alleges that it was directly prejudiced by the agency's acceptance of the ESP proposal. We agree. As the protester points out, ESP proposed [deleted] full time equivalents (FTEs), while CORTEK (the incumbent for the requirement) proposed a total of [deleted] FTEs. CORTEK notes that the way in which ESP was able to reduce its proposed staffing--which led directly to a reduction in its price--was to propose [deleted], and that it was only able to do this because its proposed [deleted] do not have the required 8 years of experience performing maintenance on C-130 or C9B aircraft.

In light of the discussion above, we conclude that the agency improperly accepted ESP's noncompliant proposal and sustain this aspect of CORTEK's protest.<sup>1</sup>

#### Proposal Page Limitation

CORTEK alleges that the agency treated it and ESP disparately in evaluating proposals because the agency improperly allowed ESP--but not CORTEK--to exceed the RFP's specified page limitation for technical proposals. The RFP limited technical proposals to no more than 25 pages. RFP at 114. The record shows that ESP's technical proposal was 26 pages in length, and CORTEK maintains that the agency should not have evaluated the last page of the ESP proposal. The last page of the ESP proposal appears to include information relating to one of ESP's three past performance/corporate experience examples, and this example was proffered by ESP during discussions.<sup>2</sup> AR, Exh. 30, ESP Technical Proposal, at 26. The record also shows that, on the basis of that new past

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<sup>1</sup> In a related argument, CORTEK maintains that the agency improperly failed to downgrade the ESP proposal because ESP proposed to recruit all of the CORTEK incumbent employees performing the requirement. According to the protester, it was unreasonable for the agency to accept this proposed approach from ESP because the agency knew, based upon a review of the CORTEK proposal, that CORTEK had exclusive employment agreements with its proposed personnel.

A review of the CORTEK proposal demonstrates that CORTEK's position is based entirely on unsupported representations in the firm's proposal that it had exclusive employment agreements with its proposed personnel. AR, exh. 14, CORTEK Proposal, at 2, 4. CORTEK did not include any evidence of these alleged exclusive employment agreements, such as signed letters of intent or commitment, with its proposal. We therefore conclude that CORTEK's unsubstantiated representations in its proposal do not provide a basis for our Office to object to the agency's evaluation of the ESP proposal for this reason.

<sup>2</sup> As discussed above, the agency produced an extremely limited report. The agency did not include ESP's initial proposal in the record. The contracting officer states that this past performance/corporate experience example was a new example, and the limited evaluation record states that this example was introduced in ESP's revised proposal to replace a previous example. Contracting Officer's Third Supplemental Statement of Facts at 4; AR, exh. 29, Revised Source Selection Evaluation Board Report, at 11. The version of the ESP FPR that the agency did ultimately provide (after initially providing a more extensively redacted version of the ESP proposal) is still heavily redacted and we can only discern the contract number, the name of the customer, and the dates of performance. AR, exh. 30, ESP Technical Proposal, Second Redacted Version, at 25-26. This redacted version of the proposal did not include any substantive information about the experience example. Id.

performance/corporate experience example, the agency changed the ratings assigned to ESP's proposal from unknown confidence to satisfactory confidence under the past performance evaluation factor, and from marginal to acceptable under the corporate experience factor. AR, exh. 27, SSDD, at 1-2.

The agency responds that the first page of the ESP technical proposal was an executive summary that merely reiterated the contents of the ESP technical proposal and included no substantive information. As a result, the agency explains that it reasonably ignored the first page of the ESP proposal in performing its page count, and concluded that the proposal was only 25 pages.

We disagree. Agencies are required to evaluate proposals consistently, and in accordance with a solicitation's instructions, including any instructions relating to a proposal's format and page limitations. See DPK Consulting, B-404042, B-404042.2, Dec. 29, 2010, 2011 CPD ¶ 12 at 4-6.

As noted, the RFP included a 25 page limit for technical proposals, but ESP's technical proposal included 26 pages. The RFP specifically provides that: "[p]ages submitted in excess of the page limitations described above will not be evaluated." RFP at 114. Although the agency maintains that the first page of the ESP proposal was merely an executive summary that could be excluded from the page count, the record shows that the first page also included information relating to ESP's approach to paying health and welfare benefits directly to its employees: [deleted]. AR, exh. 25, ESP Executive Summary. It appears that this information is found nowhere else in the ESP technical proposal.

Because the evaluation record in this case is comprised of selected, heavily redacted documents that do not include the agency's evaluation findings with respect to ESP's corporate experience, past performance or price proposal, we are unable to determine whether or not this benefits information included in the executive summary on the first page proved significant in the agency's ultimate selection of the ESP proposal for award. That said, and as correctly noted by the protester, the record does show that the information included on page 26 of the ESP technical proposal apparently was central to the agency concluding that the ESP proposal should receive a satisfactory (rather than unknown) past performance confidence rating and an acceptable (rather than a marginal) corporate experience rating. The information on page 26 of the ESP proposal should not have been considered because it was included on a page that exceeded the 25 page limitation imposed by the RFP, and, as noted, the RFP specified that pages in excess of 25 pages would not be evaluated.<sup>3</sup> We therefore sustain this aspect of CORTEK's protest.

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<sup>3</sup> ESP submitted a declaration from one of its employees in which the employee states that the ESP proposal was prepared using the Microsoft Word software  
(continued...)

## Past Performance and Corporate Experience

CORTEK also maintains that the agency unreasonably assigned the ESP proposal a satisfactory confidence rating for its past performance, and an acceptable rating for its corporate experience based on a past performance example outside the period of consideration specified in the RFP for such examples. In this connection, the RFP provided that the agency would only consider past performance/corporate experience examples that had been performed within the 5 years preceding the date for submission of proposals. RFP at 114. The record shows that ESP's third example, submitted with its revised proposal, had been performed from February 1, 2004 to March 31, 2010. The protester maintains that this was outside the 5-year period specified in the RFP.

The agency states that proposals were due on March 2, 2015, and that it only considered the last 29 days of ESP's performance of that contract (from March 2, 2010 to March 31, 2010) in evaluating ESP's past performance and corporate experience.

CORTEK responds by maintaining that, even if that were true, it was unreasonable for the agency to have upgraded the ESP proposal from marginal to acceptable under the corporate experience factor, and from unknown confidence to satisfactory confidence under the past performance factor, based solely on the last 29 days of ESP's performance.<sup>4</sup>

Once again, we note that the record in this case is comprised of only selected, heavily redacted documents. We do not have the substantive portions of the ESP proposal relating to this (or any other) past performance/corporate experience example, nor do we have the agency's evaluation record as it pertains to the evaluation of ESP's past performance. While it is possible that the agency's evaluation of this example properly was confined to the final 29 days of ESP's performance, and while it also is possible that the information relating to that contract provided a reasonable basis to upgrade ESP's ratings under the past

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application, and that it was only 25 pages when prepared. Declaration of ESP's President. This statement is not supported by any of the documentation in the record. The intervenor did not proffer a copy of its proposal in Word format, and all copies of the ESP FPR submitted by the agency with its report are in Adobe pdf format and include 26 pages. AR, exhs. 13, 30.

<sup>4</sup> CORTEK also suggests that it is unreasonable to think that the agency could have compartmentalized its consideration of ESP's performance of this contract for only the final 29 days of contract performance.

performance and corporate experience factors, on this record we have no information in the record to permit our review of this aspect of the agency's evaluation. Where, as here, the record lacks adequate documentation for our Office to review the propriety of an agency's evaluation, we will sustain the protest. Intelligent Decisions, Inc., supra, at 15-16. We therefore sustain this aspect of CORTEK's protest.<sup>5</sup>

## RECOMMENDATION

For the reasons discussed above, we sustain CORTEK's protest. We recommend that the agency reevaluate proposals in a manner that is consistent with the discussion above, and make a new selection decision. In the alternative, we recommend that the agency reopen the acquisition with the competitive range offerors, solicit, obtain and evaluate revised proposals, and make a new selection decision. In either event, if the agency concludes that the ESP proposal does not represent the best value to the government, we recommend that it terminate ESP's contract and, if otherwise proper, make award to CORTEK, the only other competitive range offeror. Finally, we recommend that the agency reimburse CORTEK the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel

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<sup>5</sup> CORTEK also challenged the adequacy of the agency's discussions. Specifically, CORTEK maintains that the agency failed to advise it that its price was unreasonably high. However, there is nothing in the record showing that the agency considered CORTEK's price to be unreasonably high. Accordingly, the agency was under no obligation to discuss CORTEK's price with the firm. Joint Logistics Managers, Inc., B-410465.2, B-410465.3, May 5, 2015 2015 CPD ¶ 152 at 3-4. We therefore deny this aspect of CORTEK's protest.