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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:** MPC Containment Systems, LLC

**File:** B-405354; B-405354.4

**Date:** October 6, 2011

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Garry S. Grossman, Esq., Gabriel D. Soll, Esq., McCarthy, Sweeney & Harkaway, PC, for the protester.  
David P. Ingold, Esq., Elliot S. Avidan, Esq., United States Marine Corps, for the agency.  
Gary R. Allen, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that proposal was misevaluated is denied where evaluation was reasonably supported by the record and the protester's arguments reflect mere disagreement with agency's technical judgments.
2. GAO will not invoke the significant issue exception to its timeliness rules where GAO has previously considered the issue on the merits in prior decisions.
3. Supplemental protest filed after receipt of agency report is untimely where the information on which the protest was based was known or should have been known by the protester at the time it received its debriefing.

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### **DECISION**

MPC Containment Systems, LLC, of Chicago, Illinois, protests its failure to receive award under request for proposals (RFP) No. M67854-11-R-5030, issued by the United States Marine Corps, Marine Corps Systems Command, for commercial product integration to support and sustain certain fuel and water systems programs, known as Tactical Fuel Systems (TFS) and Water Supply Support Equipment (WSSE). MPC argues that its proposal was unreasonably evaluated.

We deny the protest in part and dismiss it in part.

## BACKGROUND

On February 18, 2011, the agency issued the RFP as a commercial item, total small business set-aside that sought proposals for a commercial product support integrator (CSI) for the TFS and WSSE logistics support programs. The RFP contemplated a single award of a fixed-price requirements contract with a \$99 million ceiling and a 5-year performance period (1 base year and 4 option years).

The RFP included Federal Acquisition Regulation (FAR) clauses 52.212-1 and 52.212-2 to provide instructions to offerors and describe the evaluation factors. In pertinent part, FAR § 52.212-1 required prospective offerors to provide the following specific information relative to the technical factor:

(2) Technical: The Offeror shall describe:

(i) The size and composition of the team that will be assigned to manage this task. Describe individual qualifications and experience relevant to this task for each position. Indicate whether the individual will be assigned full or part time.

(ii) All teaming arrangements to include prime and subcontractors' roles. Describe the proposed work to be performed by you as the prime and by each individual subcontractor.

RFP, FAR § 52.212-1(1)(2)(i). FAR § 52.212-2 provided that proposals would be evaluated based on past performance, technical and price factors, listed in descending order of importance. RFP, FAR § 52.212-2(a). Under the technical factor, evaluators would rate offerors' "proposed personnel, teaming arrangements, processes and approaches to meeting quality standards, utility of its web-based order tracking system, delivery schedule, and management of its warranty program." FAR § 52.212-2(a)(2).

On April 15, MPC and six other offerors submitted proposals. In addition to evaluating past performance, the agency evaluated the technical proposals, and identified strengths and weaknesses and assigned ratings to each proposal under the technical factor and its subfactors.<sup>1</sup> MPC's proposal received marginal ratings for

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<sup>1</sup> In evaluating the technical proposals, the agency used adjectival ratings of exceptional, acceptable, marginal and unacceptable. These ratings corresponded to agency judgments regarding the degree to which a technical proposal met threshold requirements and the value of particular strengths and weaknesses. Agency Report (AR), Tab 10, Business Clearance Memorandum (BCM), at 10; Tab 12, Summary of Findings (SOF), at 2.

two of the six subfactors of the technical factor—team composition and teaming arrangements—and an overall technical rating of marginal. AR, Tab 10, BCM, at 16; Tab 12, SOF, at 3. The underlying bases for the ratings were documented in the SOF. See AR, Tab 12, SOF, at 12-13. The awardee, JGB Enterprises, Inc., received an overall technical rating of acceptable. AR, Tab 13, Debriefing Slides, at 7.

After reviewing the SOF, the contracting officer (who was also the source selection authority) determined that JGB offered both the highest-rated and lowest-priced offer, and selected that firm for award. After a debriefing, this protest followed.

## DISCUSSION

MPC's protest focused on the agency's evaluation under the team composition and teaming arrangements subfactors of the technical factor. MPC contends that the marginal rating assigned to MPC's proposal under these two subfactors was unreasonable.

The evaluation of technical proposals is a matter within an agency's discretion since an agency is responsible for defining its needs and for identifying the best methods for accommodating those needs. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. Our Office will not reevaluate technical proposals; rather we review a challenge to an evaluation to determine whether the agency acted reasonably and in accordance with the RFP's evaluation criteria and applicable procurement statutes and regulations. Id. A protester's mere disagreement with the agency's judgments does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

### Team Composition Subfactor

As indicated above, the RFP required proposals to provide specific information concerning the composition and size of the team that would be assigned to manage the contract, including a description of individual qualifications and experience relevant to this contract for each position, with an indication whether the individual would be assigned full or part time. RFP, FAR § 52.212-1(l)(2)(i).

In its proposal, MPC generally described its responsibilities, noting that it would "assign an experienced Program Manager responsible for delivery against requirements of the program and to serve as a single point of contact for [the program]." AR, Tab 11, MPC Proposal, at 9. In a later portion of this same section, MPC specifically stated that its management team would be comprised of [deleted] identified individuals. Id. at 12-13. MPC, however, did not commit the individual it identified as the project manager; instead, MPC noted that he would "most likely be the liaison with" the agency. Id. at 13. MPC also described another member of its proposed management team as spending half of his time [deleted] Id.

The SOF found that these descriptions did not reference a committed management team, and further did not meet the requirement in the FAR § 52.212-1(1)(2)(i) to specify whether identified individuals would be assigned full or part time to the contract. The SOF concluded that this caused there to be “[u]ncertainty in the construct and commitment of key personnel,” and rated MPC’s team composition as “marginal.” AR, Tab 12, SOF, at 12.

MPC argues that because its proposal generally stated that its management team would “be dedicated to the [TFWS] program,” this should trump any particular statements made later, even though specific identified individual’s roles were only tentatively described. Protest at 5.

However, it is an offeror’s responsibility to submit a well-written proposal, which clearly demonstrates compliance with the solicitation and allows a meaningful review by the agency. International Med. Corps., B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. The RFP here plainly stated that offerors were to describe the qualifications, roles and the amount of time each “individual” it proposed would spend on the program. RFP, FAR § 52.212-1(1)(2)(i). MPC, at best, provided equivocal language concerning its specific commitment of a “likely” program manager and another identified individual, only one-half of whose time was spent working on related management operations. See AR, Tab 11, MPC Proposal, at 13. We find that the agency had a reasonable basis find MPC’s team composition marginal.

#### Teaming Arrangements Subfactor

The RFP stated that the agency intended to award a single contract to a particular vendor to function as a commercial product support integrator. RFP, Statement of Work (SOW), at 1. The RFP further stated that its purpose in seeking a single contract was to decrease cost, delivery time, and management. Id. Offerors were informed that they were required to describe all teaming arrangements to include prime and subcontractors’ roles. RFP, FAR § 52.212-1(1)(2)(ii). They were also informed that part of their technical evaluation would include an assessment of their teaming arrangements to determine their overall capability to fulfill the SOW requirements. RFP, FAR § 52.212-2(a)(2).

In its proposal, MPC makes the general statement that it will function as the program manager and that it will supplement its experience by teaming with subcontractors [deleted]. AR, Tab 11, MPC Proposal, at 9. Later, in its specific description of [deleted]’s responsibilities, MPC states that its subcontractor, [deleted], would [deleted]. Id. at 13-14.

The agency rated the MPC technical proposal as marginal under the teaming arrangements evaluation subfactor, citing MPC’s reliance upon [deleted] to perform the above-referenced tasks as cause for the agency to question MPC’s ability to manage and lead the efforts. AR, Tab 12, SOF, at 12.

MPC asserts that the agency's determination that MPC was over-reliant on [deleted] is unreasonable. MPC also argues that the agency unreasonably assigned MPC a weakness upon the mistaken notion that MPC proposed to have [deleted] negotiate delivery dates directly with the agency.

Based on our review of the record, we do not find the agency's judgments to be unreasonable based on the contents of MPC's proposal. Nor were these judgments inconsistent with the RFP's evaluation criteria. The fact that MPC merely disagrees with the agency's judgment does not render the agency's judgment unreasonable.<sup>2</sup> SDS Int'l, Inc., supra.

## UNTIMELY ISSUES

### Price Evaluation Scheme

MPC argues that the agency had used an unreasonable price evaluation scheme. The price evaluation scheme was set forth in the RFP and also specifically discussed in the Questions and Answers before the date proposals were due. AR, Tab 8, Questions and Answers, No. 77. Consequently, this protest issue was untimely raised under our Bid Protest Regulations, which require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2011).

MPC also argues that we should invoke the significant issue exception to our timeliness rules, 4 C.F.R. § 21.2(b), citing various cases where we found similar price evaluation schemes improper. In order to prevent our timeliness rules from becoming meaningless, the significant issue exception is rarely used. Midwest Pipeliners, Inc., B-250795, Jan. 12, 1993, 93-1 CPD ¶ 40. The exception is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a prior decision. Schleicher Cmty. Corrs. Ctr., Inc., B-270499.3 et al., Apr. 18, 1996, 96-1 CPD ¶ 192 at 7. As indicated by the cases cited by the protester, our Office has previously addressed this issue in numerous decisions. Thus, we decline to invoke the significant issue exception here.

### Supplemental Protest Issues

After the agency submitted its report responsive to MPC's protest, on August 22, 2011, MPC filed a supplemental protest arguing first that the agency's unfavorable assessment of its use of subcontractors involved an unstated evaluation criterion.

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<sup>2</sup> In its various protest submissions, MPC has raised arguments in addition to, or variations of, the arguments discussed above. We have considered all of MPC's various allegations and find no basis to sustain its protest.

MPC claims that it learned for the first time from the agency report that its marginal rating under the technical factor was based, in part, on its proposed use of subcontractors--specifically the agency's concern as to the extent and scope of MPC's proposed use of subcontractors. MPC also argues that the agency treated JGB and MPC unequally in making this assessment, citing public information to show that JGB would also likely use subcontractors.

Where a protester files supplemental protest grounds, each new ground must independently satisfy the timeliness requirement of our Regulations, which do not contemplate the piecemeal presentation or development of protest issues. Hydraulics Int'l, Inc., B-284684, B-284684.2, May 24, 2000, 2000 CPD ¶ 149 at 16 n.8. This includes the development of issues or more specific legal arguments missing from earlier allegations of impropriety. CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 24. Our Office will dismiss a protester's piecemeal presentation of arguments that could have been raised earlier in the protest process. Alfa Consult S.A., B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 3.

On July 11, MPC received its written debriefing. This debriefing specifically categorized as a weaknesses the extent and scope of MPC's proposed use of [deleted] as a subcontractor. AR, Tab 16, MPC Debriefing, at 7. Furthermore, the public information concerning JGB, which MPC cites in its supplemental protest, was available at that time. Therefore, MPC knew or should have known the grounds of its supplemental protest on its debriefing date, and the supplemental protest claims filed after receipt of the agency report are untimely filed. 4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.

Lynn H. Gibson  
General Counsel