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

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## Decision

**Matter of:** Six3 Systems, Inc.  
**File:** B-405942.4; B-405942.8  
**Date:** November 2, 2012

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Maj. Brent A. Cotton and Max D. Houtz, Esq., Defense Intelligence Agency, for the agency.

Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency unreasonably and unequally evaluated proposals is denied where record reflects that evaluation was reasonable and consistent with solicitation's evaluation criteria and that differences in evaluation did not result from unequal treatment.
  2. Agency decision not to include protester's lower-priced, marginal-rated proposal in best value tradeoff is unobjectionable where solicitation adequately advised offerors that marginal rating may render proposal ineligible for award.
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### DECISION

Six3 Systems, Inc., of McLean, Virginia, protests the non-selection of its proposal under request for proposals (RFP) No. HHM402-11-R-0114, issued by the Defense Intelligence Agency, for intelligence analysis support and related services. The agency selected the proposals of eleven other offerors for award.<sup>1</sup> Six3 contends

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<sup>1</sup> The awardees included L-3 Stratis, of Reston, Virginia, Lockheed Martin Corporation, of Alexandria, Virginia, and The Buffalo Group, of Reston, Virginia.

that the agency's evaluation of its proposal was unreasonable and unequal relative to the evaluation of other offerors' proposals. Six3 also contends that the agency improperly made the awards without first conducting discussions and that the agency's best value determination was flawed.

We deny the protest.

## BACKGROUND

The solicitation, which was issued on August 12, 2011 and amended once, contemplated the award of multiple indefinite-delivery/indefinite-quantity contracts with fixed-price and cost-type contract line item numbers for a broad spectrum of intelligence analysis support services.<sup>2</sup>

Award was to be made to the offerors whose proposals presented the best value to the government considering the factors and subfactors shown in the table below.

Factor 1 - Corporate Security
Factor 2 - Technical/Management Capability
Subfactor 1 - Technical Expertise
Subfactor 2 - Program Management Process (PMP)
Subfactor 3 - Recruitment and Retention
Subfactor 4 - Personnel Security
Factor 3 - Past and Present Performance
Factor 4 - Subcontracting Plan
Factor 5 - Small Business Participation
Factor 6 - Cost/Price

RFP §§ M.1, M.6. The non-cost/price factors were significantly more important than the cost/price factor. Id. § M.2. The corporate security factor was a pass/fail factor under which proposals with a fail rating would not be considered for award. Id. The other non-cost/price factors and the technical/management capability subfactors were listed in descending order of importance. Id.

The solicitation stated that for each factor and subfactor, proposals would be assigned ratings of outstanding, good, acceptable, marginal, or unacceptable. RFP

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<sup>2</sup> Solicitation amendment No. 01 included complete, revised versions of solicitation sections L and M. Citations in this decision refer to those sections as they appear in amendment No. 01. See Agency Report (AR), Tabs 5.7.7, 5.7.8, RFP §§ L, M.

§ M.8.D. The solicitation included a definition for each of these ratings. Id. As relevant to this protest, the definition for the rating of marginal stated:

Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.

Id.

The solicitation advised that “[t]o be considered for award, each offeror’s proposal shall at a minimum meet the requirements of the SOW [statement of work] and shall indicate an adequate approach and understanding of the requirements.” Id. § M.3. The solicitation also advised that the agency intended to make the awards without holding discussions. Id. § L.11.C.

The agency received 30 proposals in response to the solicitation, including a proposal from Six3. AR, Tab 20.6, Source Selection Advisory Council (SSAC) Report, at 1. A source selection evaluation board (SSEB) evaluated the proposals and assigned ratings under the non-cost/price evaluation factors and subfactors. See, e.g., AR, Tab 18.14, Offeror Summary Report - Six3. The SSEB also identified proposal strengths, weaknesses, and deficiencies under each of the four factor 1 subfactors. Six3’s proposal was evaluated as follows:

Factor 1 - Corporate Security	Pass
Factor 2 - Technical/Management Capability	[No Rating <sup>3</sup> ]
Subfactor 1 - Technical Expertise	Good
Subfactor 2 - PMP	Marginal
Subfactor 3 - Recruitment and Retention	Acceptable
Subfactor 4 - Personnel Security	Marginal
Factor 3 - Past and Present Performance	Satisfactory Confidence
Factor 4 - Subcontracting Plan	Outstanding
Factor 5 - Small Business Participation	Outstanding
Factor 6 - Cost/Price	\$1,444,676,117

AR, Tab 20.6, SSAC Report, at 4.

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<sup>3</sup> For factor 2, technical/management capability, the agency assigned ratings only at the subfactor level; i.e., the agency did not assign overall factor 2 ratings. See AR, Tab 20.6, SSAC Report, at 3-4.

The SSEB presented its evaluation findings to the SSAC, which reviewed the evaluation results and comparatively assessed the proposals. Contracting Officer's Statement at 13; AR, Tab 20.6, SSAC Report, at 5. The SSAC determined that all offerors with a rating of marginal for any non-cost/price factor or subfactor did not demonstrate an adequate approach and understanding of the solicitation's requirements and/or did not meet the minimum requirements of the SOW. AR, Tab 20.6, SSAC Report, at 6. Because Six3's proposal received ratings of marginal under two subfactors, Six3's proposal was not among those considered for award. Id. Based on a tradeoff analysis that considered the evaluated cost/price and technical merits of the proposals that did not receive any ratings of marginal, the SSAC recommended making award to eleven offerors. Id. at 5-23. Six3's evaluated cost/price was lower than the evaluated cost/price of six offerors that were recommended for award. Id. at 3-4.

After reviewing the SSAC's report and deliberating with the SSAC, the source selection authority (SSA) concurred with the SSAC's award recommendations. AR, Tab 20.7, SSA Decision Memorandum, at 2-3. The agency then made the awards and conducted debriefings with the unsuccessful offerors. Contracting Officer's Statement at 14. This protest followed.

## DISCUSSION

Six3 asserts that the agency's evaluation of its proposal was unreasonable in several respects; the agency evaluated Six3's proposal unequally relative to certain other offerors' proposals; the agency unreasonably determined to make award on the basis of initial proposals, rather than conducting discussions and requesting final proposal revisions (FPR); and the agency's best value determination was flawed. We have considered all of Six3's arguments, and we conclude that none of them have merit. Below we discuss Six3's principal contentions.

### Evaluation of Six3's Proposal

Six3 challenges several aspects of the agency's evaluation of the firm's proposal. For example, Six3 argues that two weaknesses assigned to its proposal under the PMP subfactor were unreasonable. Protest at 15-17; Comments/Supp. Protest at 35-38; Supp. Comments at 29-32. The agency assigned the weaknesses based on findings that Six3's proposal lacked detail in two areas that the solicitation specified for evaluation: quality control and risk management. AR, Tab 18.14, Offeror Summary - Six3, at 5-6. These weaknesses, together with a lack of any evaluated strengths under the PMP subfactor, were the basis for Six3's marginal rating under the PMP subfactor. See id. at 4.

Six3 argues that the weaknesses were unreasonable because, in Six3's words, the agency "penalized" and "punished" Six3 for not submitting information about quality control and risk management in appendices to the firm's proposal. Protest at 17;

Comments/Supp. Protest at 36. Six3 asserts that by assigning the weaknesses, the agency improperly converted the submission of the appendices from an optional feature of the solicitation to a mandatory requirement. Comments/Supp. Protest at 36. Six3 contends that had it known that the appendices were required, it would have submitted them. Id.

In reviewing a protest against an agency's evaluation of proposals, our Office will not substitute our (or the protester's) judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2.

As relevant to Six3's claim, the solicitation stated that under the PMP subfactor, the agency, among other things, would evaluate the degree to which an offeror's "Quality Control Plan address[es] all requirements of the SOW" and the degree to which an offeror's "Risk Management Plan describ[es] established procedures/methods to be used to identify unfavorable trends and actions to mitigate risks." RFP § M.8.C.2.iv-v. Additionally, the solicitation established a 30-page limit for an offeror's technical/management capability volume. Id. § L.7.E. Prior to the due date for proposals, however, the agency--through issuance of written responses to offeror questions regarding the solicitation--notified offerors that quality control plans, risk management plans, and key personnel résumés could be submitted in proposal appendices that would not count toward the page limit. AR, Tab 5.8, RFP Questions and Answers, at 38, 41, 44.

Apparently in response to the aforementioned solicitation questions and answers, Six3 included its key personnel résumés as an appendix to its proposal. AR, Tab 6.8, Six3 Proposal, vol. II, app. A. However, unlike numerous other offerors--including ten of the eleven awardees, see Comments/Supp. Protest at 37--Six3 did not include quality control or risk management plans as appendices to its proposal. Instead, Six3 elected to provide relatively limited information regarding those features of its approach within the 30 pages of its technical/management capability volume. See AR, Tab 6.8, Six3 Proposal, vol. II, at 18, 24.

On this record we see no basis to sustain Six3's protest. Based on the solicitation questions and answers, offerors were permitted--but not required--to provide certain information in appendices. Six3 apparently understood the solicitation questions and answers because it elected to submit its key personnel résumés as an appendix to its proposal. Yet, Six3 decided not to include quality control and risk management plans as appendices. The agency's determination that Six3's proposal lacked detail in these two areas does not reflect the imposition of an unstated requirement that offerors submit appendices, nor does Six3's

disagreement with this judgment render it unreasonable.<sup>4</sup> This basis of protest is denied.

Six3 separately asserts that the agency deviated from the solicitation's evaluation rating definitions by assigning ratings of marginal to its proposal under the PMP and personnel security subfactors. Protest at 15-16; Comments/Supp. Protest at 2, 33-35; Supp. Comments at 29-31. More specifically, Six3 asserts that its marginal ratings under these subfactors were improper because its proposal was not assigned any significant weaknesses under these subfactors. Protest at 15-16; Comments/Supp. Protest at 33-34; Supp. Comments at 29-30. In this regard, Six3 points out that the solicitation defined a weakness as "a flaw in the proposal that increases the risk of unsuccessful contract performance," whereas a significant weakness was defined as "a flaw that appreciably increases the risk of unsuccessful contract performance." Protest at 15 (quoting RFP § M.8.B) (emphasis added); Comments/Supp. Protest at 2, 34 (same); Supp. Comments at 29-30 (same). Six3 also points out that one component of the solicitation's definition of marginal was that "[r]isk of unsuccessful performance is high." Protest at 16 (quoting RFP § M.8.D); Comments/Supp. Protest at 34 (same); Supp. Comments at 30 (same). Based on this language, Six3 reasons that unless a significant weakness was identified, a rating of marginal would be unjustified. Protest at 16; Comments/Supp. Protest at 34; Supp. Comments at 30.

As stated above, the solicitation defined a rating of marginal as follows:

Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.

RFP § M.8.D. Six3's proposal received two weaknesses under the PMP subfactor and one weakness under the personnel security subfactor. AR, Tab 18.14, Offeror Summary - Six3, at 5-6, 9-10. Six3's proposal did not receive any strengths under either subfactor. Id. at 4-6, 8-10. We see nothing unreasonable--given the solicitation's definition of a marginal rating--about the agency's conclusions that the weaknesses in Six3's proposal, and the absence of any offsetting strengths, warranted ratings of marginal. Additionally, based on the record here, we see no basis to conclude that the agency unreasonably determined that, based on the weaknesses identified within Six3's proposal, the risk of unsuccessful performance for Six3 was high. For these reasons, this basis of protest is denied.

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<sup>4</sup> Six3's position amounts to this: Where an offeror elects not to submit additional information as permitted by a solicitation, an agency's determination to downgrade the proposal on the basis that it lacks information reflects an unstated evaluation criterion. Under the facts here, we decline to adopt this position.

## Unequal Treatment

Six3 alleges that the agency evaluated the firm's proposal unequally relative to several of the awardees' proposals under the PMP and personnel security subfactors. Comments/Supp. Protest at 2, 11-32; Supp. Comments at 5-25. For example, with respect to the PMP subfactor, Six3 contends that the evaluation was unequal because its proposal included some of the same features as the awardees' proposals, yet only the awardees' proposals received strengths for those features. Comments/Supp. Protest at 2, 11-24; Supp. Comments at 4-19. As examples of this in the area of intelligence analysis support, Six3 claims that like the awardee proposals in question, its proposal stated that Six3's core competencies included all-source intelligence analysis; stated that Six3 had performed numerous intelligence community contracts; provided detailed information about its program management organization; and demonstrated a large "geographical footprint." Comments/Supp. Protest at 12-16; Supp. Comments at 6-11.

The agency responds that the evaluation was reasonable because in each case the basis for the strength assigned to the awardee proposal was broader than the proposal features cited by Six3. See Supp. Memorandum of Law at 5-14, 16-19.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. LASEOD Group, LLC, B-405888, Jan. 10, 2012, 2012 CPD ¶ 45 at 4; Brican Inc., B-402602, June 17, 2010, 2010 CPD ¶ 141 at 4. An agency's evaluation judgments are by their nature often subjective; nevertheless, the exercise of these judgments in the evaluation of proposals must be reasonable and bear a rational relationship to the announced criteria on which competing offers are to be selected. Southwest Marine, Inc.; Am. Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. A protester's mere disagreement with an agency's judgment is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Based on our review of the record here, we see no basis to conclude that the differences in the evaluation findings resulted from unequal treatment. In this regard, for each of the awardee strengths challenged by Six3, the SSEB documented findings that the proposals to which the strengths were assigned included a very high level of detail and, in some cases, additional features that Six3 has not alleged were included in its proposal. For example, with respect to the area of intelligence analysis support, the SSEB reports describe how the awardees' proposals included "extensive evidence" and "substantial . . . information" that demonstrated the offerors' success in providing the requirements. AR, Tab 18.3, Offeror Summary Report - [DELETED], at 4; AR, Tab 18.7, Offeror Summary Report - [DELETED], at 5. While Six3 has identified certain features of its proposal that were similar to those in the awardee proposals at issue, Six3 has not

demonstrated that its proposal included the breadth of detail that the agency considered (and documented) as part of the basis for the strengths assigned to the competing proposals. Six3's arguments essentially reflect mere disagreement with the agency's subjective evaluation judgments and do not support a conclusion that the judgments were unreasonable. Accordingly, this basis of protest is denied.<sup>5</sup>

#### Award without Discussions

In its comments on the agency report, Six3 argues for the first time that the agency unreasonably determined to make the awards on the basis of initial proposals, rather than holding discussions and requesting FPR. Comments/Supp. Protest at 3-4, 49-52. The solicitation expressly advised that the agency intended to make the awards without holding discussions, RFP § L.11.C, and at the time of its debriefing, Six3 knew that the agency had not held discussions. Accordingly, Six3's argument, not raised until the time of its comments and more than 10 days after its debriefing, is untimely. 4 C.F.R. § 21.2(a)(2) (2012). In any event, because there are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions, and no requirement that an agency document its decision not to initiate discussions, we generally do not review an agency's decision not to initiate discussions. See Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5; Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3.

#### Best Value Determination

Six3 asserts that the agency's best value determination was flawed in various respects. Protest at 11-14; Comments/Supp. Protest at 3, 42-49; Supp. Comments at 35-48. For example, Six3 points out that its proposal was not found to be unacceptable under any of the evaluation factors or subfactors, and that its evaluated cost/price was lower than the evaluated cost/price of many of the awardees. Comments/Supp. Protest at 48. Six3 argues that by eliminating proposals--such as its own--that received a rating of marginal under a factor or subfactor, the agency improperly failed to consider proposals that were not unacceptable--and thus were acceptable in Six3's view--in its best value tradeoff. Protest at 13; Comments/Supp. Protest at 2-3, 46-48; Supp. Comments at 43.

In a "best value" procurement, it is the function of the SSA to perform a tradeoff between price and non-price factors, that is, to determine whether one proposal's superiority under the non-price factors is worth a higher price. Even where, as here,

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<sup>5</sup> Six3 raises a number of other, similar allegations that the agency evaluated proposals in an unequal manner. Comments/Supp. Protest at 16-32; Supp. Comments at 12-25. We have considered each of these allegations, and, based on the record, we conclude that none have merit.



price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its selection decision. e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Specifically, before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and why its technical superiority warrants paying a price premium. ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7.

Here, the agency documented its determination to eliminate from consideration for award proposals that received a rating of marginal under a factor or subfactor as follows:

The SSAC members performed a detailed analysis of the SSEB evaluation results and all offerors with a rating of marginal or lower in any non-price factor or subfactor did not demonstrate an adequate approach and understanding of the requirements and/or did not meet the requirements of the SOW. Regardless of cost/price these proposals do not meet the minimum requirements for award.

AR, Tab 20.6, SSAC Report, at 6. For the reasons discussed below, we view the agency's action to be consistent with the solicitation and unobjectionable.

As stated above, the solicitation advised that to be considered for award, a proposal "shall at a minimum meet the requirements of the SOW and shall indicate an adequate approach and understanding of the requirements." RFP § M.3. As also stated above, the solicitation provided evaluation rating definitions including the following definition for marginal:

Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.

Id. § M.8.D. Read together, the solicitation's definition of a marginal rating (which encompassed a failure to clearly meet solicitation requirements) and its statement that a proposal must meet the solicitation requirements to be considered for award adequately advised offerors that a rating of marginal may render a proposal ineligible for award. In other words, and stated conversely, the solicitation effectively informed offerors that ratings of acceptable or higher may be necessary for a proposal to be considered for award. Accordingly, we see no merit in Six3's argument that the agency was required to consider its lower-priced, marginal-rated

proposal for award.<sup>6</sup> See Superior Landscaping Co., Inc., B-310617, Jan. 15, 2008, 2008 CPD ¶ 33 at 3, 4, 8 (proposal rated marginal properly excluded from best value tradeoff where solicitation provided that proposal must receive rating of at least acceptable to be considered for award).

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>6</sup> Six3 raises other challenges against the agency's best value determination. Comments/Supp. Protest at 42-49; Supp. Comments at 35-48. We have considered each of these allegations, and, based on the record, we conclude that none have merit.