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## Decision

**Matter of:** 22nd Century Technologies, Inc.  
**File:** B-412547; B-412547.2; B-412547.3  
**Date:** March 18, 2016

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Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest challenging significant weaknesses and weaknesses assessed to protester's technical proposal is denied where record reflects that the majority of the agency's evaluation findings were reasonable and consistent with the terms of the solicitation, and in instances where errors may have occurred, any impropriety did not prejudice the protester.

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### DECISION

22nd Century Technologies, Inc., of Montgomery, Alabama, protests the award of a contract to DigiFlight, Incorporated, of Columbia, Maryland, by the Department of the Army, Army Materiel Command, under request for proposals (RFP) No. W9113M-14-R-0007 for services to support the United States Army Space and Missile Defense Command/Army Forces Strategic Command Simulation Center (SimCtr) facility. 22nd Century alleges that the agency's evaluation of its proposal was unreasonable in various respects.

We deny the protest.

## BACKGROUND

On January 6, 2015, the agency issued the solicitation as a competitive 8(a) small business set-aside. RFP at 1-2.<sup>1</sup> The solicitation contemplated the award of a cost-plus-fixed-fee/level-of-effort contract with a one-year base period and four one-year option periods. Id. at 2. The solicitation included a performance work statement (PWS) outlining the needed facility support services. Id. at 21-26.

The award was to be made on a best-value tradeoff basis, considering four factors: technical, management, past performance, and cost. RFP at 100. Regarding the relative importance of the factors, the solicitation stated that the technical and management factors were equal in importance and were more important than the cost factor. Id. The solicitation further stated that the cost factor was more important than the past performance factor, but that the non-cost factors, when combined, were significantly more important than the cost factor. Id.

The technical factor included two subfactors: corporate capabilities and technical approach. RFP at 100. The corporate capabilities subfactor was said to be more important than the technical approach subfactor. Id. The management factor included three subfactors: personnel, management control systems, and transition plan. Id. The personnel and management control systems subfactors were said to be equal in importance and more important than the transition plan subfactor. Id.

Evaluation criteria were provided for each factor and subfactor. RFP at 101-04. The solicitation stated that adjectival ratings would be assigned under all non-cost factors and subfactors. Id. at 105-06. The ratings for the technical and management factors and subfactors were outstanding, good, acceptable, marginal, and unacceptable.<sup>2</sup> Id. at 105. The solicitation stated that a proposal's technical and management factor ratings would be based on a "roll-up" of the subfactor ratings, but that a rating of marginal or unacceptable under any subfactor would result in a marginal or unacceptable rating at the factor level, regardless of the other subfactor ratings. Id. The solicitation further stated that in order to be considered eligible for award, a proposal must receive ratings of acceptable or higher under the technical and management factors. Id. Finally, the solicitation stated that the agency intended to make the award without conducting discussions. Id. at 2, 100.

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<sup>1</sup> Citations to the solicitation refer to the "conformed" version issued under solicitation amendment No. 0006. Agency Report (AR), Tab 8H, Conformed RFP.

<sup>2</sup> The ratings for the past performance factor were substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. RFP at 106.

The agency received numerous proposals by the solicitation's April 30 closing date, including proposals from 22nd Century and DigiFlight. See AR, Tab 5, Source Selection Decision Document (SSDD), at 4. The agency convened a source selection evaluation board (SSEB), as well as teams to evaluate the proposals under each evaluation factor. See AR, Tab 7, Source Selection Evaluation Plan, at 8. The adjectival ratings that ultimately were assigned to 22nd Century's and DigiFlight's proposals, as well as the firms' proposed and probable costs, are shown in the table below.

	<b><u>22nd Century</u></b>	<b><u>DigiFlight</u></b>
<b>Technical</b>	<b>Marginal</b>	<b>Good</b>
Corporate Capabilities	Acceptable	Acceptable
Technical Approach	Marginal	Good
<b>Management</b>	<b>Acceptable</b>	<b>Acceptable</b>
Personnel	Good	Acceptable
Management Control Systems	Acceptable	Acceptable
Transition Plan	Acceptable	Acceptable
<b>Past Performance</b>	<b>Satisfactory Confidence</b>	<b>Satisfactory Confidence</b>
<b>Proposed Cost</b>	<b>\$23,635,430</b>	<b>\$22,014,312</b>
<b>Probable Cost</b>	<b>\$25,498,778</b>	<b>\$24,779,983</b>

AR, Tab 5, SSDD, at 5-7.

As the table reflects, 22nd Century's proposal was assigned a rating of marginal under the technical approach subfactor. Consistent with the solicitation provision regarding how the agency would "roll-up" subfactor ratings to the factor level, the rating of marginal under the technical approach subfactor resulted in 22nd Century's proposal being assigned a rating of marginal under the technical factor.<sup>3</sup>

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<sup>3</sup> The solicitation defined the marginal rating 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 at 105.

After the evaluation process was complete, the contracting officer—who also served as the source selection authority in this procurement—reviewed the proposals, the SSEB’s findings, and the strengths and weaknesses assigned to the proposals. See AR, Tab 5, SSDD, at 8. She then documented a best-value analysis. Id. at 5-8. In the analysis, she first observed that of the numerous proposals that the agency received and evaluated, only two—DigiFlight’s and another offeror’s—were assigned ratings of acceptable or higher under both the technical and management factors, and, therefore, only those two proposals were eligible for award under the terms of the solicitation. Id. at 5. She also observed that while those two proposals were assigned equal ratings under the management and past performance factors, DigiFlight’s proposal was assigned a higher rating under the technical factor, and DigiFlight’s proposed and probable costs were lower.<sup>4</sup> Id. at 8. Based on the technical superiority and lower cost of DigiFlight’s proposal, the contracting officer found that DigiFlight’s proposal represented the best value to the government. Id.

After the agency made award to DigiFlight, 22nd Century received a written debriefing, and then filed a protest with our Office.

## DISCUSSION

22nd Century first challenges the agency’s evaluation of its proposal under the technical approach subfactor. As discussed above, the marginal rating assigned to the firm’s proposal under this subfactor effectively rendered the proposal ineligible for award. The record reflects that the marginal rating was based on the technical evaluation team’s (TET) assessment of two significant weaknesses and eleven weaknesses under this subfactor.<sup>5</sup> AR, Tab 10A, 22nd Century Technical Evaluation Rep., at 1. 22nd Century alleges that both significant weaknesses and seven of the eleven weaknesses were unreasonable.

Before addressing 22nd Century’s allegations, we observe that in reviewing protests of an agency’s evaluation of an offeror’s technical proposal, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation’s evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Alutiiq Tech. Servs. LLC, B-411464, B-411464.2, Aug. 4, 2015, 2015 CPD ¶ 268 at 4; Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. An offeror’s disagreement with the agency’s evaluation, without more,

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<sup>4</sup> 22nd Century’s proposed and probable costs were higher than those of DigiFlight (as shown in the table above) but lower than those of the other eligible offeror. AR, Tab 5, SSDD, at 5.

<sup>5</sup> The TET also assessed seven strengths to 22nd Century’s proposal under this subfactor. AR, Tab 10A, 22nd Century Technical Evaluation Rep., at 1.

does not establish the evaluation was unreasonable. See Alutiiq Tech., Servs. LLC, supra; Wackenhut Servs., Inc., supra.

Here, the solicitation established the following evaluation criteria for the technical approach subfactor:

The [agency] will assess the adequacy of the offeror's technical approach for successfully supporting each PWS performance requirement . . . . The evaluation will consider the completeness of the offeror's identification of critical support requirements associated with the technical objectives of the PWS, and the realism, innovativeness, and effectiveness of the proposed solutions (methodologies, processes, and procedures) for accomplishing those requirements.

RFP at 101. The first significant weakness assessed to 22nd Century's proposal under this subfactor concerned PWS section 2.1.11, which addressed special project support. In relevant part, PWS section 2.1.11 stated:

[T]he contractor shall assist the government in identifying and . . . procuring the proper hardware and software for specific programs/projects. When applicable, the contractor shall properly package all unclassified and classified shipments, and shall facilitate shipping of all unclassified and classified hardware and software.

The contractor shall also provide system administrative support as necessary . . . . [T]he contractor shall install, integrate, checkout, update, maintain, and execute all SimCtr special purpose software. The contractor shall ensure that any special purpose software product problems are properly identified, documented, and corrected. The contractor shall analyze operating system software problems and resolve them appropriately.

Id. at 24. The TET documented the significant weakness regarding this PWS section as follows:

The offeror fails to adequately address the majority of this PWS requirement, specifically, 1) packaging unclassified/classified [shipments;] 2) facilitating shipping of unclassified/classified hardware/software; 3) administrative support; 4) integrating, checkout, maintaining and executing special purpose software[;] and 5) tracking/disposition of special purpose software problems. The absence of information creates uncertainty and risk for program execution.

AR, Tab 10A, 22nd Century Technical Evaluation Rep., at 10.

22nd Century argues that the TET's finding was unreasonable because its proposal allegedly addressed "at least three of the five areas" listed by the TET. Supp. Protest at 10; Comments at 4; Supp. Comments at 4. In support of this claim, 22nd Century first points to a one-paragraph section of its proposal that addressed special project support. This paragraph includes statements that 22nd Century would assist the agency "with [DELETED]." Comments at 4 (quoting AR, Tab 6C, 22nd Century Proposal, Vol. III, Technical, at 31). From this, 22nd Century claims that its proposal "responded to at least two of the Army's concerns." Id. Although 22nd Century does not identify which areas of concern this proposal language allegedly addressed, presumably the firm believes they were (1) the integration, checkout, maintenance, and execution of special purpose software; and (2) the tracking/disposition of special purpose software problems. We disagree.

As stated above, PWS section 2.1.11 required the contractor to "integrate, checkout, update, maintain, and execute all SimCtr special purpose software" and "ensure that any special purpose software product problems are properly identified, documented, and corrected." RFP at 24. The proposal paragraph relied on by 22nd Century lacks detail regarding how 22nd Century would integrate, checkout, maintain, or execute software. Additionally, the paragraph does not address the tracking or disposition of software problems. Finally, while the paragraph broadly references the "maintenance of software," it makes no mention of special purpose software. Special purpose software, as opposed to some other type of software, was the subject of the requirement in PWS section 2.1.11.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. See Jacobs Tech., Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 8; ACC Constr.-McKnight JV, LLC, B-411073, Apr. 30, 2015, 2015 CPD ¶ 147 at 5. An offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. See Jacobs Tech., Inc., supra; ACC Constr.-McKnight JV, LLC, supra. On the record here, we see no basis to question the TET's finding that 22nd Century's proposal failed to adequately address the requirements in PWS section 2.1.11 regarding special purpose software. Further, even if we were to agree with 22nd Century's assertion that its proposal responded to "at least two of the Army's concerns" regarding special project software requirements, Comments at 4, the firm's position is inconsistent with the solicitation's evaluation approach, which provided for consideration of the completeness of an offeror's response to the PWS's technical objectives, see RFP at 101.

22nd Century also claims that its proposal addressed the requirement in PWS section 2.1.11 for administrative support. Supp. Protest at 10; Comments at 4; Supp. Comments at 4. As reflected above, PWS section 2.1.11 established a

requirement for “system administrative support” for special projects. RFP at 24. In its lead argument on this issue, however, 22nd Century does not point to the section of its proposal that addressed special project support. Instead, the firm cites a separate section of its proposal that addressed a separate PWS requirement for technical support/problem resolution. Supp. Protest at 10 (quoting AR, Tab 6C, 22nd Century Proposal, Vol. III, Technical, at 27); Comments at 4 (same). Thus, even assuming for the sake of argument that the proposal language relied on by 22nd Century addresses special project system administrative support (and it is not apparent that it does), the language is located in a section of the proposal that addresses a different requirement.

In arguing that its proposal addressed the special project system administrative support requirement, 22nd Century also cites the following passage that was located in the proposal section that addressed special project support:

[DELETED].

Supp. Protest at 10 (quoting AR, Tab 6C, 22nd Century Proposal, Vol. III, Technical, at 31-32); Comments at 4 (same). While some aspects of the process described above may involve administrative support, the passage does not expressly reference system administrative support, which was the subject of the requirement at issue. Further, much of the process described above is reasonably read to be programmatic or managerial in nature, rather than administrative.

In sum, we view the TET’s finding that 22nd Century’s proposal did not adequately address the special purpose software and administrative support requirements under PWS section 2.1.11 as reasonable. Based on this, as well as the fact that 22nd Century does not challenge the TET’s findings that the firm’s proposal did not adequately address two other requirements under PWS section 2.1.11 (the packaging and shipment of hardware and software), we also view the significant weakness assigned to the proposal under PWS section 2.1.11 as reasonable.

22nd Century next challenges the other significant weakness assessed to its proposal under the technical approach subfactor. The TET documented this significant weakness as follows: “The offeror failed to provide information requested by the RFP with respect to duties/responsibilities, education, experience or security clearances for personnel, which creates doubt as to their understanding of the PWS requirements.” AR, Tab 10A, 22nd Century Technical Evaluation Rep., at 11. 22nd Century asserts that the solicitation did not require this information, and, therefore, the significant weakness was unwarranted.

As relevant to 22nd Century’s claim, the solicitation included detailed instructions regarding proposal preparation. RFP at 79-97. Among other things, the instructions required that an offeror’s technical proposal include a “labor category crosswalk” that “mapped” a set of “government labor categories” (GLC) to the

offeror's internal labor categories. Id. at 85. The solicitation provision regarding this crosswalk is at the center of the dispute here, and it stated as follows:

Labor Category Crosswalk. Identify the offeror's proposed internal labor categories that comprise the GLCs, and provide a crosswalk that clearly correlates the offeror's internal labor categories to the GLCs in terms of the duties/responsibilities, education level, and years of experience of the applicable positions. If the offeror proposes internal labor categories that cannot be reasonably mapped to the GLCs, the proposal shall identify the category titles and their qualification requirements (i.e., duties/responsibilities, education levels, clearance level and years of experience).

RFP at 85.

Drawing from the second sentence above, 22nd Century argues that information regarding the duties/responsibilities, education, and experience requirements of an offeror's internal labor categories was required only if the offeror's internal labor categories could not reasonably be mapped to the GLCs. Supp. Protest at 10-11; Comments at 5-6; Supp. Comments at 5-6. 22nd Century states that its internal labor categories reasonably can be mapped to the GLCs, and, therefore, the firm did not include a crosswalk showing its internal labor category qualifications in its proposal. Comments at 5. As outlined above, the firm's failure to provide this information resulted in the assessment of the significant weakness at issue here. See AR, Tab 10A, 22nd Century Technical Evaluation Rep., at 11. We see no basis to disturb the agency's evaluation in this area.

The solicitation provision in question communicates that information regarding the duties/responsibilities, education, and experience requirements of an offeror's internal labor categories was required regardless of whether the offeror's internal labor categories reasonably could be mapped to the GLCs. In this regard, the first sentence of the provision requires a crosswalk that "clearly correlates" the qualifications of an offeror's internal labor categories to the GLCs. RFP at 85. Similarly, the second sentence requires that the proposal "identify" the qualifications of the offeror's internal labor categories. Id. Hence, the provision establishes that internal labor category qualifications must be provided, regardless of how easily an offeror's internal labor categories are mapped to the GLCs.<sup>6</sup> Accordingly, we see no merit in 22nd Century's position that because its internal labor categories reasonably could be mapped to the GLCs, the firm need not have provided its internal labor category qualifications.

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<sup>6</sup> The only distinction in the qualifications required under the two sentences is clearance levels, which are required under the second sentence, but not the first.



As an alternative argument, 22nd Century claims that its proposal provided the internal labor category information in question. In support of this argument, the firm cites several scattered references within its proposal to the experience and clearance levels of various segments of its proposed staff. Supp. Protest at 11 (citing AR, Tab 6C, 22nd Century Proposal, Vol. III, Technical, at 20, 22, 36); Comments at 7 (same). We see no merit in this claim.

As discussed above, the solicitation called for a crosswalk showing, at the very least, the duties/responsibilities, education levels, and experience requirements of an offeror's internal labor categories. RFP at 85. 22nd Century's proposal includes a labor category crosswalk that lists 15 internal labor categories, but provides no information about the qualifications of those labor categories. Tab 6C, 22nd Century Proposal, Vol. III, Technical, at 38. The scattered proposal references to the experience and clearance levels of various proposed staff on which 22nd Century's argument relies are not contained in the crosswalk and do not provide all of the internal labor category qualification information required by the solicitation. To conclude, for all of the reasons discussed above, 22nd Century's claim regarding the second significant weakness assigned to the firm's proposal under the technical approach subfactor is denied.

22nd Century also challenges seven of the eleven weaknesses assigned to its proposal under this subfactor. Supp. Protest at 12-14; Comments at 7-12; Supp. Comments at 6-9. The agency concedes that one of these weaknesses was unwarranted. Contracting Officer's Statement and Agency Memorandum of Law (COS/MoL) at 21. After reviewing the record regarding the other six weaknesses, we have concerns as to the reasonableness of some of them. Nevertheless, for the reasons discussed below, we see no reasonable possibility that the agency's actions prejudiced the firm. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. See Applied Bus. Mgmt. Solutions Inc., LLC, B-405724, Dec. 15, 2011, 2012 CPD ¶ 14 at 9; Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 8.

Under both the technical approach subfactor and the technical factor, DigiFlight's proposal was assigned a rating (good) that was two levels higher than the rating assigned to 22nd Century's proposal (marginal). AR, Tab 5, SSDD, at 6. Also, DigiFlight's proposed and probable costs were considerably lower than those of 22nd Century. Id. at 5. 22nd Century has not challenged four of the eleven weaknesses assigned to its proposal under the technical approach subfactor. Further, our review of the record shows the agency's assessment of a number of the weaknesses challenged by the firm to have been reasonable. In addition to these two sets of weaknesses, there are also the two above-discussed significant weaknesses that the record shows to be reasonable. In light of the reasonableness

of these numerous adverse evaluation findings, as well as the disparity between the two proposals' technical ratings and evaluated costs, we see no reasonable possibility that 22nd Century would have had a substantial chance of receiving the award, even if several of the weaknesses assigned to the firm's proposal under the technical approach subfactor were eliminated.

22nd Century also challenges aspects of the agency's evaluation of its proposal under the management, past performance, and cost factors. Protest at 5-7; Supp. Protest at 15-18; Comments at 14-17; Supp. Comments at 10-14. We have considered all of 22nd Century's claims, and, based on the record, we again conclude that none furnishes a basis on which to sustain the protest. With regard to the claims relating to the management and past performance factors, we find that the record shows the agency's evaluation to have been reasonable. With regard to the claim relating to the cost factor, we find that the record shows that any error made by the agency did not prejudice the firm.<sup>7</sup>

As a final matter, 22nd Century's supplemental protest raised allegations regarding the agency's evaluation of DigiFlight's proposal. Supp. Protest at 19. The agency in its report responded to these allegations. COS/MoL at 61-64. 22nd Century's comments on the report did not address the agency's response. We therefore consider 22nd Century to have abandoned these allegations, and we will not further consider them. See JSR, Inc., B-405463, Nov. 8, 2011, 2011 CPD ¶ 265 at 5 n.6; Tiger Truck LLC, B-310759, B-310759.2, Feb. 7, 2008, 2008 CPD ¶ 44 at 3.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>7</sup> 22nd Century's claim concerns an upward adjustment that the agency made to the labor rate of the firm's proposed project manager. Comments at 16; Supp. Comments at 12-13. In response to this claim, the agency asserts that the upward adjustment to the project manager's labor rate--combined with an upward adjustment to the labor rate of another position, program analyst--amounted to \$318,367. COS/MoL at 68-69. 22nd Century has not disputed this figure. See Comments at 16; Supp. Comments at 12-13. The probable cost of 22nd Century's proposal was \$718,795 higher than DigiFlight's proposal--an amount considerably higher than the less-than \$318,367 at issue under 22nd Century's claim. See AR, Tab 5, SSDD, at 5. Thus, to the extent 22nd Century's claim has merit, the probable cost of 22nd Century's proposal still would be considerably higher than the probable cost of DigiFlight's proposal even if the adjustment to the project manager's labor rate was removed, meaning there is no reasonable possibility that any error prejudiced the firm.