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**Comptroller General
of the United States**

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

Decision

Matter of: The University of Hawaii

File: B-414247.2

Date: April 3, 2017

Richard C. Seder, The University of Hawaii, for the protester.
Charles R. Lucy, Esq., Holland & Hart LLP, for Mid-Continent Research for Education and Learning International, the intervenor.
Justin V. Briones, Esq. and Jose Otero, Esq., Department of Education, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated proposals under the solicitation's evaluation factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation and, following submission of the agency's report responding to the protest allegations, protester failed to submit any substantive response to the agency's comprehensive report.

DECISION

The University of Hawaii (U of H), of Honolulu, Hawaii, protests the Department of Education's award of a contract to Mid-Continent Research for Education and Learning International (McRel), of Denver, Colorado, pursuant to request for proposals (RFP) No. ED-IES-15-R-0016 for various research and support services aimed at furthering a range of educational objectives. U of H challenges multiple aspects of the agency's proposal evaluation.

We deny the protest.

BACKGROUND

On February 5, 2016, the agency issued RFP No. ED-IES-15-R-0016, seeking proposals for offerors to serve as Regional Educational Laboratories (REL)¹ in each of several regions.² Offerors were advised that the successful contractor will be responsible for three types of activities: (1) applied research; (2) dissemination of scientifically-valid research; and (3) technical assistance related to application and use of scientifically-valid research. RFP at 40.

The solicitation provided that award would be made on the basis of a best-value tradeoff between cost/price and technical factors; stated that cost/price “will be significantly less important than technical merit”; and established the following technical factors, listed in descending order of importance: (1) quality and credibility of the technical approach; (2) technical and managerial qualifications and experience of the proposed project director and deputy director; (3) qualifications of the non-director/non-deputy director project staff; (4) quality and feasibility of proposed plans contained within the three “Concept Papers” required by [solicitation] appendix A; (5) soundness of the management plan and timelines; (6) organizational capabilities, experience, and resources; (7) small business participation; and (8) past performance. RFP at 141.

With regard to evaluation of cost/price, the solicitation identified the estimated annual funding levels for each region,³ and provided that each offeror’s proposal should “make the most of available funding.” RFP at 145. More specifically, the solicitation stated:

[T]he Department expects that each offeror will propose a budget that utilizes the maximum projected funding level for each region. An offeror gains nothing by proposing a lower cost/price than the maximum amount provided [by the funding estimate.] Each offeror is expected to use the maximum amount available to each region to provide the most benefit possible to each region. An offeror with an inferior technical

¹ The solicitation states: “Over the past decade, the REL program has contributed to a significant cultural change that continues to gain momentum in education--namely, the increasing focus on basing education decisions on high-quality research evidence.” Agency Report (AR), Tab C, RFP, at 39.

² The agency states that the regions covered by this solicitation were the Mid-Atlantic, Midwest, Appalachia, West, Southeast, Central, Northeast and Islands, Northwest, and Pacific. AR, Tab A, Contracting Officer’s Statement, at 1-2. Separate competitions were conducted for each region. U of H’s protest concerns only the competition for the Pacific region.

³ The estimated annual budget for the Pacific region was \$4,732,000. Id. at 131.

proposal but lower proposed budget will not overtake an offeror with a technically excellent proposal and a budget that proposes to use the maximum regional allocation.

Id. at 132.

On April 5, the agency received 3 proposals for the Pacific region, including proposals from U of H and McRel. Thereafter, the agency established a competitive range consisting of U of H and McRel, and conducted two rounds of discussions. Final revised proposals were submitted on December 1. Thereafter, the proposals were evaluated as follows:⁴

	McRel	U of H
1. Quality and Credibility of Technical Approach	Excellent	Marginal
2. Qualifications/Experience of Project Director and Deputy Director	Excellent	Satisfactory
3. Qualifications of Other Staff	Excellent	Satisfactory
4. Quality and Feasibility of Concept Paper Plans	Satisfactory	Marginal
5. Soundness of Management Plan and Timelines	Satisfactory	Satisfactory
6. Organizational Capabilities, Experience, and Resources	Excellent	Satisfactory
7. Small Business Participation	Excellent	Excellent
8. Past Performance	Excellent	Excellent

AR, Tab N, Post-Negotiation Memorandum, at 7.

In assigning a marginal rating to U of H’s proposal under the most important factor (quality and credibility of technical approach), the agency concluded that the proposal “did not present a logical, well-organized work plan,” was “jargon-filled,”

⁴ In evaluating proposals under the technical evaluation factors, the agency identified various strengths and weaknesses, and assigned adjectival ratings of excellent, satisfactory, marginal, or unsatisfactory. AR, Tab L, Technical Evaluation Panel Consensus Memorandum, at 1.

and was likely to need extensive revisions.⁵ Id. at 8. In assigning a satisfactory rating to U of H's proposal under the second most important factor (qualifications/experience of project director and deputy director), the agency concluded that U of H "did not provide sufficient evidence that [the proposed project director and deputy director] have experience conducting causal studies."⁶ Id. at 9. In assigning a marginal rating to U of H's proposal under factor 4 (quality and feasibility of concept papers), the agency concluded that one of U of H's concept papers "was disjointed and the goals were unclear," and that another "was not based on strong research." Id. at 10.

In contrast, in assigning an excellent rating to McRel's proposal under the most important factor, quality and credibility of technical approach, the agency concluded that "McRel has a clear understanding of the IES [Institute of Education Sciences] review process and they proposed realistic timeframes for their proposed products." Id. at 8. In assigning an excellent rating to McRel's proposal under the second most important factor, qualifications/experience of project director and deputy director, the agency concluded that "McRel's proposed Director and Deputy Director exceeded the requirements specified [in the solicitation]." Id. at 9.

The agency also concluded that the two offerors "proposed equivalent budgets in accordance with the formula stated in the Solicitation" and that their technical proposals were reasonable and consistent with their cost/price proposals. Id. at 20. Accordingly, McRel's proposal was selected for award on the basis of its higher technical rating. This protest followed.

DISCUSSION

U of H protests virtually every aspect of the agency's evaluation, characterizing the agency's ratings and assessments as "intentional or negligent misstatements or misrepresentations." See Protest at 3, 8, 10, 19, 20, 21. For example, with regard to the agency's assessment, under the most important evaluation factor (technical approach), that U of H's proposal "did not present a logical, well-organized work plan" and was "jargon-filled," U of H protests that it "followed the instructions included in the RFP." Id. at 3. In this regard, U of H references a section of the

⁵ Among other things, section M of the solicitation advised offerors that proposals would be evaluated under this factor to assess whether "[the] proposed plan is clearly written, coherent, well organized, and demonstrates a commitment to detail and high quality work." RFP at 142.

⁶ Section M of the solicitation advised offerors that qualifications of proposed project directors and deputy directors would be evaluated with regard to their "[e]xperience conducting high-quality, peer-reviewed, education research studies using causal and correlational research designs." Id. at 142.

solicitation, titled “Introduction,” that stated the proposal should include an “overview” which “briefly describe[s]” the offeror’s technical approach, and argues that its proposal complied with these instructions.⁷ See RFP at 122.

With regard to the agency’s assessment, under the second most important factor (qualifications/experience of project director and deputy director), that U of H’s proposed project director and deputy director did not have experience conducting causal studies, U of H acknowledges that its proposed director and deputy director “do not have a significant publication record [of] having authored causal studies.” Protest at 16. Nonetheless, U of H complains that the agency’s criticism is “a misstatement” because “both have experience overseeing and managing researchers who have conducted these studies.” Id.

With regard to the agency’s evaluation under factor 4, quality and feasibility of concept papers, concluding that U of H’s concept papers were “disjointed and the goals were unclear” and were “not based on strong research,” U of H’s protest maintains that its goals were clearly stated and that the agency’s conclusions regarding its research were “arbitrary and capricious” because there was not an established standard regarding the adequacy of research. Id. at 20-22.

Finally, U of H complains about the excellent rating assigned to McRel’s proposal under the past performance factor, asserting that certain aspects of McRel’s prior performance should have precluded this rating. Id. at 24-26.

In response to U of H’s protest, the agency provided explanations regarding the basis for each of the various assessments, further noting that U of H’s protest relied on assertions and/or information that was first provided to the agency with the protest. AR, Tab A, Contracting Officer’s Statement, at 32. In this regard, the agency maintains that, while U of H disagrees with various aspects of the agency’s evaluation, it has failed to establish that any aspect of that process was unreasonable. We agree.

It is well-established that the evaluation of proposals is a matter within the discretion of the contracting agency. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4; Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. In reviewing an agency’s evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and with procurement statutes and regulations.

⁷ U of H’s protest fails to note that immediately following the section of the solicitation titled “Introduction,” there appears a section titled “Technical Plan” which states, among other things: “The offeror shall provide details explaining the strategies, operations, and procedures it proposes.” Id.

MicroTechnologies, LLC, supra; STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 4-5. In this regard, an offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. MicroTechnologies, LLC, supra, at 7. Finally, where an agency's report specifically addresses issues raised by the protester, and the protester fails to address the agency's responses in its comments, we consider the issues to have been abandoned by the protester and will not further consider them. Analex Space Sys., Inc.; PAI Corp., B-259024, B-259024.2, Feb. 21, 1995, 95-1 CPD ¶ 106 at 8.

Here, following receipt and review of the agency report which provided the agency's responses to U of H's various protest arguments, U of H submitted 3 pages of comments. Notwithstanding its protest assertions of "intentional or negligent misstatements or misrepresentations," U of H's 3-page response is devoid of any substantive response to the agency's explanations regarding U of H's particular protest allegations. In any event, our review of the agency's evaluation record provides no basis to meaningfully question the reasonableness of the agency's assessments. On this record, there is no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel