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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: Cube-All Star Services Joint Venture

File: B-291903

Date: April 30, 2003

Katherine S. Nucci, Esq., Thompson Coburn, for the protester.
Capt. Ronald D. Sullivan, Raymond M. Saunders, Esq., and Kenneth Allen, Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably rejected protester's proposal for failing to meet solicitation requirements regarding emergency work, and for protester's introduction into its final revised proposal of a proposed program to reduce preventative maintenance staffing that was incomplete and inconsistent with other portions of the protester's final revised proposal.

2. Agency engaged in meaningful discussions with protester where agency conducted two rounds of written discussions and two rounds of oral discussions during which protester was reasonably led into all areas of its proposal that required correction or amplification.

DECISION

Cube-All Star Services Joint Venture (CASS)[1] protests the Department of the Army's rejection of CASS' proposal under request for proposals (RFP) No. DAMD17-02-R-0001 to provide base operating support services at Fort Detrick, Maryland. CASS maintains that the agency unreasonably evaluated CASS's management/technical approach as failing to meet the solicitation requirements, and that the agency failed to conduct meaningful discussions.

We deny the protest.

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[1] CASS is a joint venture between the The Cube Corporation of Sterling,Virginia and All Star Services Corporation of San Diego, California. Protest at 1.

BACKGROUND

On November 13, 2001, pursuant to the provisions of Office of Management and Budget (OMB) Circular A-76, the agency issued solicitation No. DAMD17-02-R-0001, seeking proposals to perform base operating support services at Fort Detrick, Maryland.[2] The solicitation was issued to select a private sector proposal to compete with the agency's most efficient organization (MEO) under the A-76 cost comparison process.[3] A site visit was held for potential offerors in December 2001 and, thereafter, the agency issued several RFP amendments, which primarily responded to questions from potential offerors.

The solicitation advised offerors that the agency "contemplates award of a firm fixed price contract with a minimal number of cost reimbursement CLINs [contract line item numbers]"[4] for a 1-year base period and four 1-year option periods, and provided that source selection would be based on the technically acceptable proposal offering the lowest evaluated cost/price. Agency Report, Tabs 7, 8, RFP, at 2344, 2347. The RFP established the following non-cost/price evaluation factors--management/technical approach,[5] past performance/past experience, and

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[2] The U.S. Army Garrison at Fort Detrick currently provides services and support for various tenant organizations including the Army Medical Research Institute for Infectious Diseases, the Army Medical Information Systems and Services Agency, the Army Medical Material Agency, the Army Medical Material Development Activity, and the Nation Cancer Institute. Agency Report, Tab 2, Acquisition Plan, at 0054. The solicitation contemplated performance of the following activities: maintenance and operations of facilities; logistics; hazardous materials management; military personnel services; engineering and construction services; visual information services; continuing education and training; housing management; arts, crafts and woodworking programs; and auto craft program. Agency Report, Tab 3, Performance Work Statement (PWS), at 0077.

[3] The procedures for determining whether the government should perform an activity in-house, or have the activity performed by a contractor are set forth in OMB Circular A-76, and that Circular's Revised Supplemental Handbook (March 1996).

[4] Four of the thirty-four CLINs in each year of the solicitation schedule were cost-reimbursement items. These CLINs primarily dealt with requirements to perform minor construction, individual job orders under $25,000, and acquisition of related supplies and materials. Agency Report, Tab 5, at 2184-89.

[5] Under the factor for evaluating management/technical approach, the solicitation established the following subfactors: management approach; staffing and key personnel; phase-in plan; and technical approach. Under some of these subfactors,

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subcontracting--and provided that the agency would employ the following adjectival ratings: "technically acceptable,"[6] "marginal,"[7] and "technically unacceptable."[8] Agency Report, Tab 7, RFP at 2347-50. Section L of the RFP required offerors to submit three non-cost/price proposal volumes, which corresponded to the three non-cost/price evaluation factors, and provided detailed instructions regarding the required content of each volume. Agency Report, Tab 6, RFP at 2331, 2334-39.

Four proposals, including CASS's, were submitted by the June 14, 2002 closing date;[9] thereafter, each offeror was permitted to make an oral presentation to the agency's source selection evaluation board (SSEB).[10] The agency states that, in evaluating proposals, each proposal "was reviewed independently in a very structured approach by each SSEB voting and nonvoting member on the corresponding committee" and that "after the individual evaluations, each committee held a consensus meeting to discuss proposal strengths and weaknesses." Agency Report, Contracting Officer's

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the solicitation identified additional sub-subfactors. Agency Report, Tab 7, RFP, at 2347-49.

[6] The solicitation defined a "technically acceptable" rating as applicable to "any proposal which can be awarded 'as is' and contains few, if any, minor weaknesses," elaborating that a technically acceptable proposal "meets or exceeds the government's minimum needs and the government is confident that the offeror can successfully perform the services." Agency Report, Tab 6, RFP, at 2331, 2334-39.

[7] The solicitation defined a "marginal" rating as applicable to "any proposal that contains weaknesses that must be clarified/modified before it can be awarded," elaborating that, "[t]he contractor could possibly perform the services, but only if the weaknesses are corrected." Agency Report, Tab 7, RFP, at 2347.

[8] The solicitation defined a "technically unacceptable" rating as applicable to "any proposal that contains major weaknesses and could only become eligible for award if it were substantially revised, and added that "[such a proposal] does not meet the government's requirements and the government has no confidence that the offeror can successfully perform the services." Agency Report, Tab 7, RFP, at 2347.

[9] The other proposals were submitted by Griffin Services, Inc., C&E Services, Inc., and Jantec, Inc. Griffin's proposal was ultimately selected for comparison to the MEO.

[10] The SSEB was divided into four committees, corresponding to the four primary evaluation factors--management/technical approach, past performance/past experience, subcontracting, and cost/price; each committee was comprised of both voting and nonvoting members. The nonvoting members were described as "subject matter experts" who had been retained by the agency under a separate contract. Agency Report, Contracting Officer's Statement, at 5.

Statement, at 6-7. The consensus meetings led to assignment of the following initial technical ratings for each of the proposals:

Offeror	Technical Rating
Griffin Services, Inc.	[deleted]
CASS	[deleted]
C&E Services, Inc.	[deleted]
Jantec, Inc.	[deleted]

Agency Report, Contracting Officer's Statement, at 7.

Since none of the proposals were rated as technically acceptable, the agency opened discussions with all four offerors, initiating these discussions by letters dated August 5, 2002.

In the August 5 letter to CASS, the agency summarized various concerns regarding CASS's proposal and provided a 24-page attachment identifying multiple specific noncost/price issues that CASS needed to address.[11] Agency Report, Tab 16. The agency's letter summarized the agency's concerns, stating, in part, as follows:

> There [are] several reasons that your technical proposal was [deleted]. Care must be taken to ensure that when you propose a job description that the staff members you propose meet those qualifications. . . . Additionally, there are many times when it appears impossible for the listed number of staff to be capable of providing coverage at the facilities for the operating hours listed in the PWS. Your method of accomplishing these tasks with the identified staff must be explained to us in the proposal. . . . Your response may or may not need to increase the total number of staff, but we need an explanation of how you intend to staff functions during the required hours of operations and how you plan to dispatch, manage, inspect, equip, and supply staff who . . . react to maintenance and repair actions. The final concerns are the unique environment and the type of operations at Fort Detrick (i.e. BL-3 and BL-4 laboratories.[[12]]) For example, job positions must

[11] Additionally, the Army provided a separate, 4-page attachment identifying various cost/price related issues.

[12] The National Institute of Health has established four biosafety levels (BL) for research laboratories that handle infectious and/or otherwise potentially hazardous agents. BL-3 laboratories involve activities with agents that may cause serious and potentially lethal infection; BL-4 laboratories involve activities with agents that pose

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> be specific to the tasks required, and draft plans must reflect a deeper degree of knowledge of Fort Detrick.

Agency Report, Tab 16, at 3275-76.

On August 14, the agency followed up the August 5 letter by conducting face-to-face discussions with CASS; during this meeting, CASS was afforded an opportunity to ask questions and provide comments regarding the matters addressed in the August 5 letter.[13] Agency Report, Contracting Officer's Statement, at 8.

Revised proposals were submitted by CASS, Griffin and C&E Services on or before the September 3 due date. Thereafter, the SSEB again evaluated each proposal; the overall ratings for each proposal did not change. By letters dated October 11, the agency again identified various continuing concerns regarding each proposal. Specifically, in the October 11 letter to CASS, the agency advised CASS, among other things, of the following:

> [CASS] provided some [deleted] for preventative maintenance and service orders as justification for some of the craftsperson [staffing levels]. However, the times are [deleted] and apparently do not include [deleted]. In addition, special procedural, accessing, and protective equipment requirements for repair and maintenance in USAMRIID [U.S. Army Medical Research Institute for Infectious Disease] biological safety areas could increase the [time] estimates considerably. [CASS] should provide full justification for these time estimates, and demonstrate how the [deleted] are included.
>
> . . . . .
>
> [CASS's] description of the reporting lines for the Quality Control, Safety, and Environmental (QCS&E) Manager was unclear. The QCS&E Manager is shown as [deleted], but the text only shows him [deleted]. [CASS] should clarify how this [deleted] ensures the autonomy of the QCS&E Manager. The PWS requirement that the Quality Manager "be accountable to upper management" is to ensure

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the highest risk of life-threatening disease, may be transmitted via aerosol route, and for which there may be no available vaccine or therapy.

[13] The agency conducted similar discussions with Griffin and C&E Services; Jantec withdrew from the competition following the initial evaluation of proposals. Agency Report, Contracting Officer's Statement, at 9.

> that the QC Manager is able to be autonomous of the management chain for operations.
>
> . . . . .
>
> [CASS] should explain how properly skilled off-duty staff will be able to respond within 15 minutes to Priority 1, Emergency work, as required by the PWS TE 5.20-4.

Agency Report, Tab 24, at 4535-41.

Again, approximately 1 week after the written discussions were sent, the agency conducted face-to-face discussions with CASS. At that meeting the contracting officer notes that he specifically called CASS's attention to various agency concerns, including the concern that CASS's proposal did not adequately address the solicitation requirement to respond to emergencies within 15 minutes. The contracting officer states that, in response, the CASS negotiatior acknowledged his understanding of the agency's concern, but stated that because this was an A-76 procurement, CASS intended to "roll the dice." Agency Report, Contracting Officer's Statement, at 3, 9.

Final revised proposals were submitted by the November 5 due date; thereafter, the agency's SSEB performed final proposal evaluations. Griffin's final proposal was rated technically acceptable; CASS's and C&E Services' proposal were rated technically unacceptable. Specifically, CASS's proposal was rated technically unacceptable under the primary evaluation factor for evaluating management/technical approach; more specifically, CASS's proposal was rated technically unacceptable under each of the following management/technical approach subfactors: management approach; staffing/key personnel; phase-in; and technical approach.[14] Agency Report, Contracting Officer's Statement, at 11. Overall, the agency concluded that CASS's proposal "did not convey a confidence that CASS could adequately perform the requirements of the PWS." Agency Report, Contracting Officer's Statement, at 10. Based on this evaluation, the agency eliminated CASS's proposal from further consideration, advising CASS of this action on January 7, 2003. This protest followed.

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[14] CASS's cost/price proposal was also rated unacceptable based on various deficiencies, including inaccuracies and inconsistencies regarding CASS's proposed subcontractors' indirect rates and labor rates. CASS acknowledges the existence of certain "mistake[s]," "typographical error[s]," and "multiplication errors" on the part of its proposed subcontractors. Protest at 32, 34, 35.

DISCUSSION

CASS protests that it was unreasonable for the agency to conclude that CASS's proposal failed to meet the solicitation requirements with regard to CASS's proposed management/technical approach. CASS argues that, notwithstanding various weaknesses, the proposal should have been evaluated as minimally complying with the solicitation requirements. We disagree.

In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, and with procurement statutes and regulations. Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586 at 3. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

The record shows that CASS's proposal was rated as unacceptable for, among other things, failing to comply with the RFP requirements regarding "priority 1-emergency" work.[15] Specifically, the RFP stated:

> PRIORITY 1 -- EMERGENCY: Emergency work takes priority over all other work and requires immediate action, including overtime or diverting craftsmen from other jobs, if necessary, to cover the emergency. Usually work will be classified as emergency when it consists of correcting failures/problems constituting an immediate danger to life, health, mission, security or property. . . .[[16]] Required response time for emergency work is within 15 minutes.

Agency Report, Tab 3, RFP Technical Ex. 5.20-4, at 2044.

In evaluating CASS's initial proposal, the agency found that CASS only proposed [deleted]. The agency was concerned that CASS would be unable to meet the

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[15] The RFP divided work orders into three categories--"priority 1-emergency," "priority 2-urgent," and "priority 3-routine"--and provided a narrative, descriptive paragraph defining each level. Agency Report, Tab 3, RFP Technical Exh. 5.20-4, at 2044-45.

[16] Stated examples of emergency work included: spillage of hazardous/toxic substances, gas leaks, major utilities service failures, broken electrical components that may cause fire or shock, and broken water or steam pipes, as well as overflowing drains, clogged toilets (when only one is available for use), and accidental lock-ins of children. Agency Report, Tab 3, RFP Technical Exh. 5.20-4, at 2044.

response time for emergency requirements during the remaining time periods. Accordingly, as noted above, in its written discussion questions dated October 11, the agency requested that CASS "explain how properly skilled off-duty staff will be able to respond within 15 minutes to Priority 1 Emergency work." Agency Report, Tab 24, at 4541. During the face-to-face discussions conducted on October 24, this matter was again, orally, brought to CASS's attention. Agency Report, Contracting Officer's Statement at 3, 9. The contracting officer states (and CASS does not dispute) that the CASS negotiator acknowledged an understanding of the agency's concern, but stated that CASS would "roll the dice." Id.

In its final proposal revisions, following the October discussions, CASS addressed this issue by again indicating it would [deleted]. However, with regard to the [deleted], CASS's final proposal provided only the following:

> [Deleted].

Agency Report, Tab 26, CASS Final Proposal Revision, at 4631.

In short, despite the agency's repeated expressions of concern regarding this matter, CASS declined to [deleted], and offered no information or commitment regarding the proximity to Fort Detrick from which its [deleted] personnel would be responding.

In evaluating this aspect of CASS's proposal as unacceptable, the agency concluded:

> Since Frederick [where Fort Detrick is located], is a high cost of living area, most service staff live much more than 15 minutes from Ft. Detrick (i.e. Thurmont [Maryland], rural areas, West Virginia, etc). It is unreasonable to expect that they will be able to respond in 15 minutes. The normal drive time [for employees traveling] to Ft. Detrick is often in excess of 30 minutes. This does not include the time required to clear security at the front gate, obtain necessary equipment and travel to the emergency.

Agency Report, Tab 48, SSEB Final Report, at 11371.

CASS maintains that this aspect of its proposal should have been evaluated as meeting the RFP's minimum requirements, arguing that, [deleted], Protest at 29, and elaborating that "the data furnished by the Army . . . show[s] that such emergencies historically have not occurred frequently (about one event every two weeks)."[17]

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[17] We do not take a position regarding whether emergency situations (defined by the solicitation as involving "an immediate danger to life, health, mission, security or property") that occur "every two weeks" are properly characterized as "rare occurrence[s]"; however, the basis for CASS's frequency calculation ("one event

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CASS Comments, Mar. 13, 2003, at 42. Finally, CASS explains that, "[w]ithout [deleted], it [was] impossible for CASS to provide any further explanation of how on-call staff can respond to emergencies within 15 minutes." Protest at 29.

As discussed above, CASS was well aware of the agency's concern regarding this aspect of its proposal, yet declined to respond in a manner that would reasonably demonstrate how the RFP's requirements regarding emergency work would be met. Further, we view the agency's concern--that is, that without assurances that CASS's personnel responding to emergency requirements [deleted]--to be reasonably based. Indeed, by CASS's own admission, it was "impossible" for CASS to provide any assurance regarding its ability to meet the 15-minute response requirement because [deleted].[18] CASS's candid statement regarding the "impossibil[ity]" of responding to the 15-minute requirement simply confirms the reasonableness of the agency's ultimate conclusion that CASS's proposal "did not convey a confidence that CASS could adequately perform the requirements of the PWS." Agency Report, Contracting Officer's Statement, at 10. On this record, we find no basis to question the agency's conclusion that CASS's proposal failed to comply with the solicitation requirements.[19]

Additionally, the agency evaluated CASS's proposal as technically unacceptable based on CASS's proposal, appearing for the first time in its final proposal revisions,

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every two weeks") appears inconsistent with the data provided in the solicitation. In this regard, the solicitation advised offerors that they should expect to perform 10,434 service orders annually, and that 2 percent of these orders will involve "priority 1 - emergency" work. Agency Report, Tab 3, RFP Technical Exh. 5.20-4, at 2045. This data suggests, to us, that offerors will perform approximately 208 "priority 1 - emergency" service orders each year (2 percent of 10,434)--or, on average, approximately 4 such orders per week (208 service orders divided by 52 weeks).

[18] It is clear that the solicitation requirement to respond to emergencies within 15 minutes effectively mandated that offerors propose either on-site staff or staff in close proximity to Fort Detrick. CASS did neither.

[19] Throughout its pursuit of this protest, CASS has asserted that the agency evaluated CASS's proposal and Griffin's proposal in a disparate manner. We have reviewed all of CASS's arguments in this regard and find no merit in them. Specifically, with regard to the 15-minute requirement discussed above, CASS expressly acknowledges that "Griffin proposed [deleted]." CASS Comments on Agency Report, Mar. 13, 2003, at 44. As CASS further acknowledges, "Griffin's approach was obviously preferable to the evaluators." Id. Based on CASS's own statements, it is clear that the agency had a reasonable basis to distinguish between CASS's and Griffin's management/technical approach.

of [deleted]. The agency found CASS's proposal of [deleted] incomplete and inconsistent with other aspects of its final proposal.

CASS's proposed [deleted] was offered in response to agency concerns with its previously proposed staffing levels. Specifically, during the second round of discussions, the agency advised CASS as follows:

> The overall staffing level is insufficient to perform many of the PWS requirements. The offeror was previously asked to demonstrate how it could perform all of the PWS requirements with the proposed staffing level, and did not adequately answer the question. For example, the offeror proposed to increase staffing for [deleted] by reclassifying positions (a [deleted] to a [deleted] and a [deleted] to a [deleted]). This method of addressing staffing shortages within the organization does not adequately address the request for clarification for performing this type of work with the proposed staffing levels. . . . The offeror does not explain what positions are going to perform the work requirements of those positions that were reclassified.

Agency Report, Tab 24, at 4534.

In response, the technical/management portion of CASS's final revised proposal stated:

> [Deleted].

Agency Report, Tab 26, at 4579-80.

Although CASS's proposed [deleted] appeared for the first time in its final proposal revisions, CASS provided very limited information regarding its proposed implementation of this approach. Specifically, CASS proposed to retain a subcontractor to [deleted], but failed to further define the subcontractor's role, explain how involvement of this subcontractor would benefit the government, or provide additional information regarding what the [deleted] would entail. Agency Report, Tab 26, at 4579-80. Further, although CASS's proposal stated that its proposed [deleted] would "require cooperation and partnering with Government counterparts," the proposal provided no additional details. Id. Finally, CASS's proposal stated--without explanation or elaboration--that CASS was [deleted]. Agency Report, Tab 26, at 4580. In pursuing this protest, CASS expressly acknowledges that this [deleted] approach is inconsistent with other portions of CASS's final revised proposal. CASS Comments on Agency Report, Mar. 13, 2003, at 7. Nonetheless, CASS asserts that the agency should have conducted further communications with CASS to resolve this inconsistency. Id.

It is well settled that an agency has no obligation to reopen discussions to allow an offeror additional opportunities to revise its proposal when a deficiency first

becomes apparent in submitting final proposal revisions. See, e.g., Addsco Indus., Inc., B-233693, Mar. 28, 1989, 89-1 CPD ¶ 317.

Here, CASS's proposal of [deleted] (which CASS asserts is capable of reducing costs for preventive maintenance and repairs by "up to 20%," Agency Report, Tab 26, at 4579) was presented to address the agency's conclusion that CASS's prior proposal submissions failed to propose adequate resources to perform various RFP requirements. CASS's introduction of this proposed approach in its final proposal revisions, without providing adequate supporting information, along with its unexplained proposal to [deleted] (a provision which CASS acknowledges is inconsistent with other portions of its final proposal), precluded the agency from accepting its proposal without obtaining additional information. As noted above, the agency had no obligation to reopen discussions following submission of final revised proposals in order to provide CASS with yet another opportunity to address the agency's previously identified concerns. On this record, we find no basis to question the agency's conclusion that CASS's final revised proposal was unacceptable.

In summary, based on the two examples discussed above, we find that the agency had ample bases to reject CASS's proposal as technically unacceptable.[20] Since the RFP advised offerors that proposal selection would be made on the basis of the technically acceptable proposal offering the lowest evaluated cost/price, the agency acted reasonably in eliminating CASS's proposal from further consideration.[21]

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[20] We note that the agency also evaluated CASS's proposal as unacceptable for, among other things: [deleted]. Agency Report, Tab 48, SSEB Final Report, at 11368-72. In light of our discussion above, we need not address these issues.

[21] Throughout its pursuit of this protest, CASS has argued that, because not all of the individual evaluator worksheets identified all of the technical deficiencies that are ultimately reflected in the agency's source selection decision, CASS's protest should be sustained on the basis of inadequate documentation. We disagree. It is not unusual for individual evaluator ratings to differ from one another, or to differ with the consensus ratings eventually assigned; source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluators, Verify, Inc., B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8. The overriding concern for our purposes is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of the proposals. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 2 n.1. Here, based on our review of the extensive agency evaluation record, including all the evaluation worksheets and the final SSEB report, as well as our own review of CASS's proposal, we conclude that the record contains more than adequate support for the agency's ultimate conclusions.

Finally, CASS protests that "the Army failed to conduct meaningful discussions." Protest at 12. We disagree.

Although it is a requirement that, when discussions are conducted, they must be meaningful, this requirement does not mean that agencies must discuss every element of an offeror's proposal that receives less than the maximum rating when such elements are reasonably subsumed within a more general area of the proposal that has been identified as requiring amplification or correction. Volmar Constr., Inc., B-270364, B-270364.2, Mar. 4, 1996, 96-1 CPD ¶ 139 at 4; DAE Corp., B-259866, B-259866.2, May 8, 1995, 95-2 CPD ¶ 12 at 4-5. Consistent with this principle, an agency is not required to describe how the offeror should revise its proposal to cure an existing weakness or defect; indeed, one of the objectives in proposal evaluation is to assess an offeror's own understanding of the solicitation requirements, and its perception of the best method to meet those requirements. Accordingly, agencies need only lead offerors into the areas of their proposals that require correction or amplification. Creative Mgmt. Tech., Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61 at 4. Here, we find the discussions to have satisfied that standard.

As discussed above, the agency engaged in two rounds of written discussions, which included a total of 39 pages of detailed questions regarding multiple aspects of CASS's proposal, along with two rounds of face-to-face discussions, during which CASS was invited to seek clarification of any matter raised by the agency. We have reviewed the extensive discussion record here, along with the agency's final, multiple, bases for rejecting CASS's proposal and find CASS's assertion that the agency's discussions were less than meaningful to be wholly without merit. More specifically, the agency clearly led CASS into each and every area of its proposal on which the agency subsequently relied as a basis for rejecting the proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel