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**Comptroller General
of the United States**

**United States General Accounting Office
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Decision

Matter of: SWR, Inc.

File: B-284710.2; B-284710.3

Date: November 15, 2000

Benjamin M. Bowden, Esq., Albrittons, Clifton, Alverson & Moody, for the protester. Julius Rothlein, Esq., Theresa M. Young, Esq., and Rachel B. Thompson, Esq., United States Marine Corps, for the agency. Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably concluded that the protester's proposal was unacceptable under the management oversight factor and would not receive further consideration is denied where the record shows that the decision to eliminate the protester's proposal was reasonably based on the protester's failure to meet an explicit solicitation management requirement.

DECISION

SWR, Inc. protests the award of a contract to Starlight Corporation under request for proposals (RFP) No. M00681-99-R-0010, issued by the Marine Corps Base at Camp Pendleton for aircraft washing. SWR principally contends that the agency unreasonably excluded its proposal from the competition.

We deny the protest.

The RFP, issued on August 12, 1999 as a total small business set-aside, contemplated the award of a fixed-price contract to provide commercial wash services for aircraft and mobile facilities at Marine Corps Air Stations in California and Arizona. RFP § A.2.1.0. The RFP was subsequently amended three times. Amendment No. 3 replaced the original statement of work (SOW) with a revised SOW that reflected performance-based standards. Agency Report (AR) at 1. As relevant here, the revised RFP SOW under "Management Responsibilities" required that "[t]he contractor shall provide a Project Manager who shall be responsible for the performance of the work. The Project Manager . . . shall . . . have full authority to act for the contractor on all contract matters relating to the daily operation of this

contract.” RFP § A.2.13.1. The RFP called for the evaluation of the proposals under the criteria of past performance, price, management oversight, and technical ability. RFP § A.6.2; RFP amend. No. 1. All evaluation factors were of equal importance. RFP § A.6.2. The RFP provided for award to be made without discussions. RFP § A.6.g.

Five proposals were received by the closing date. The proposals were evaluated by one individual who had written the performance-based standards for the RFP. This technical evaluator rated SWR’s proposal “excellent” under the past performance factor and “good” under the technical ability factor. SWR Technical Evaluation. The evaluator assigned SWR’s proposal a “marginal” rating in the area of management oversight because he concluded that SWR’s approach to management oversight was inadequate. The evaluator found that SWR had not proposed “one person’ to talk to” for daily operations as required by the RFP; that “[the] number of personnel . . . [were] not adequate at [the air station in] Miramar [California] . . . to provide number of washes proposed”; and that SWR’s proposed tool inventory approach would slow the wash schedule at Miramar. The evaluator concluded that SWR did not “understand the scope of management requirement in order to sustain the contract wash schedule.” Starlight received an overall technical rating of “excellent.” Starlight’s price for the base year was \$1,258,080, and SWR’s price was [DELETED].

After reviewing the evaluation results and all evaluation factors, the contracting officer eliminated the proposals of SWR and another offeror from further consideration because their proposals received “marginal” ratings, indicating the agency’s belief that these offerors could not meet the agency’s needs. AR exh. 3, Source Selection Decision. Consequently, SWR was not assigned an overall technical rating and its proposal was eliminated as “unacceptable” based on its receipt of a “marginal” rating in the management oversight evaluation factor. Id. The contracting officer determined that Starlight’s proposal was the best value based on Starlight’s overall “excellent” rating. The contracting officer recognized that Starlight had submitted the second lowest priced proposal, but that the proposal of the low priced offeror, SWR, was not acceptable because of its “marginal” rating in the management oversight factor. On August 25, award was made to Starlight.

SWR challenges the agency’s decision to rate its proposal “marginal” under the management oversight factor and to eliminate the firm from the competition. SWR specifically disagrees with the evaluator’s view that its proposal did not satisfy the project manager requirement, that its proposal did not provide adequate staffing, and that its inventory approach was flawed.

The evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Env’tl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. 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 the applicable 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.

As stated above, the RFP required that the project manager have full authority to act for the contractor on all contract matters relating to the daily operation of this contract. The agency basically expected the project manager to be the single point of contact for daily operation issues. SWR proposed a project/site manager and [DELETED] site managers. AR exh. 6a, SWR Proposal, at 10-12. In describing their responsibilities, SWR explicitly stated that the [DELETED] site managers "shall be vested the authority to act for SWR on all contract matters relating to the daily operation of the resulting contracts." Id. Although the project manager was to assist site managers in the coordination and direction of daily work schedules and was available to meet with government personnel as required, the project/site manager did not have the authority to act for SWR as required by the RFP. Id.

Moreover, as the agency correctly points out, SWR's management proposal is confusing. SWR's organizational chart shows a project manager and [DELETED] site managers. AR exh. 6a, SWR Proposal, at 8. However, this organizational structure is not consistent with the narrative that follows the chart, which, as described above, proposes [DELETED] site managers and [DELETED] project/site manager. SWR's proposal also included a Vice President/Administrative Project Manager. SWR states that "[i]f the Marine Corps had a problem that could not be resolved with a site manager or the project manager, it is clear that the 'Administrative Project Manager,' as the Vice-President of the Company, had the authority to resolve any problems." Protester's Comments at 5. The administrative project manager is clearly not involved in daily operations, but has "[DELETED]," and the administrative project manager description does not include the authority required by the RFP. AR exh. 6a, SWR Proposal, at 9. Thus, this position does not meet the RFP requirement at issue.

On this record, we think the agency was reasonably justified in deciding that SWR's proposal was unacceptable because of SWR's failure to satisfy the project manager requirement.

The protest is denied.¹

Anthony H. Gamboa
Acting General Counsel

¹ Since we conclude that the agency's decision to eliminate SWR's proposal from the competition is justified on the one basis discussed above, we do not address the other agency bases for its decision to find SWR's proposal unacceptable. We note, however, that the agency has provided a reasonable explanation for its view that SWR's staffing and inventory control approach raised legitimate concerns about the acceptability of the firm's proposed approach. SWR's disagreement with the agency's position does not establish that the agency's performance concerns were misplaced.

Further, to the extent SWR challenges the award to Starflight, SWR is not an interested party to challenge this award. Under our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2000), an interested party may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. A protester is not an interested party where it would not be in line for award were its protest sustained. See Green Shop, Inc., B-278125, Dec. 1, 1997, 97-2 CPD ¶ 154 at 2. Here, the record shows that there were two other offerors, besides Starflight, with acceptable proposals eligible for award. Accordingly, SWR, whose proposal was reasonably determined unacceptable, is not an interested party to challenge the award to Starflight.