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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: John Carlo, Inc.

File: B-289202

Date: January 23, 2002

Michael D. McElroy for the protester.
Col. Michael R. Neds, and Maj. Robert W. Clark, Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's proposal for the rebuilding of a runway was reasonably evaluated by the agency as unacceptable where the protester's proposed organizational structure for accomplishing the project was unclear and where a protester's representative conceded during the presentation/discussion session that he had not read a critical section of the solicitation's specifications.
 2. Agency's record of the protester's presentation/discussion session, which consists of only the evaluator's notes, is unobjectionable, where there is no prejudicial difference regarding the protester's and agency's descriptions of what was stated during the session.
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DECISION

John Carlo, Inc. (JCI) protests the award of a contract to Dan's Excavating Inc. (DEI) under request for proposals (RFP) No. DAHA20-01-R-0012, issued by the Michigan Air National Guard, for the rebuilding of a runway, a new drainage system, approach lighting and an electrical vault, for the Selfridge Air National Guard Base, Michigan. The protester challenges the manner in which presentations/discussions were conducted, as well as the evaluation of its proposal and the selection of the awardee's higher-priced proposal for award.

We deny the protest.

The RFP provided for the award of a fixed-price contract to the offeror submitting the proposal determined to represent the best value to the agency, considering

present/past performance, technical, and price factors. The solicitation listed subfactors, as well as the elements comprising the subfactors, under the present/past performance and technical factors. There were four technical subfactors: project management, progress schedule, construction equipment and plant, and material and product compliance schedule. The RFP informed offerors that a proposal “receiving at least one ‘Unsatisfactory’ [technical] sub-factor rating may receive an ‘overall’ rating of ‘Unsatisfactory [under the technical factor].”¹ The solicitation added that each offeror’s proposed price would be evaluated for reasonableness, realism and completeness, and that in arriving at its best value determination, the proposal’s rating under the present/past performance and technical evaluation factors would be considered “approximately equal to cost or price.” RFP at 22-29; amend. No. 0001 at 3.

The agency received five proposals by the RFP’s closing date. The proposals were evaluated by a source selection evaluation board (SSEB). Three of the proposals, including JCI’s and DEI’s, were included in the competitive range. The SSEB determined that all of the proposals in the competitive range were deficient in certain areas, but were nevertheless “[s]usceptible to being made [a]cceptable.” Agency Report (AR), Tab 18, Determination of Competitive Range. For example, the SSEB determined that “none of the offerors provided an adequate narrative fully discussing their approach to the project,” and that the “[o]fferors did not adequately demonstrate their knowledge of the project that would provide the evaluators with an acceptable level of confidence of the planned project execution.” The agency decided that the “fairest way to obtain this information was to allow each [competitive range] offeror . . . the opportunity to discuss their approach and execution plan for the project orally.” AR, Tab 1, Contracting Officer’s Statement, at 5.

By letters dated August 17, 2001, the agency scheduled discussions with the three competitive range offerors. The letters informed the offerors of the specific deficiencies and weaknesses identified in their respective proposals, and requested the submission of revised proposals. AR, Tabs 19A-C, Agency Letters to Competitive Range Offerors. For example, JCI was informed that, among other things, its proposal failed to provide “complete information regarding the project management team that will be utilized on this project,” and that it needed to identify its project superintendent and its electrical subcontractor. AR, Tab 19A, Agency Letter to JCI (Aug. 17, 2001).

On August 20, the agency provided each offeror with a second letter requesting additional information regarding their respective proposals. These letters also

¹ The RFP stated that the following adjectival ratings would be used in the evaluation of technical proposals: excellent, good, satisfactory, susceptible to being made acceptable, and unsatisfactory.

confirmed that each offeror would “be attending the presentation/discussion of the subject project,” and stated that the “meeting [would] consist of a 30[-]minute presentation of your understanding and approach” to the work required. These letters informed each offeror that their “presentation should include discussing your key personnel and subcontractors who will be on site during construction, safety and quality control methods, equipment dedicated to this project and material suppliers.” The letters added that “the approach to the project and schedule requirements should be discussed in a manner that demonstrates the Contractor’s knowledge of the project and construction expertise that will ensure quality workmanship and safety with a timely completion.” The letters further stated that “[k]ey members of your team,” with a “maximum eight persons[,] . . . may attend the meeting.” Finally, the letters informed offerors that a 30-minute “question/answer period” with agency personnel would follow the presentation. AR, Tabs 21A-C, Agency Letters to Offerors (Aug. 20, 2001).

The presentations/discussions were conducted on August 29, and revised final proposals were requested and received by September 10. DEI’s proposal was rated as “very good” under the the present/past performance factor, “excellent” under the technical factor, at a total price of \$19,827,875. JCI’s proposal was rated as “satisfactory” under the present/past performance factor, “unsatisfactory” under the technical factor, at a total price of \$18,107,812. Specifically, JCI’s proposal was rated “unsatisfactory” under the project management subfactor to the technical factor, and thus, in accordance with the RFP, unsatisfactory under the technical factor overall. AR, Tab 27, Consensus Evaluation Ratings; see RFP at 27. The agency determined that DEI’s proposal represented the best value to the government, and the contract was subsequently awarded to that firm.

The protester argues that the agency’s evaluation of its proposal was unreasonable. The evaluation of proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. In reviewing an agency’s evaluation, we will not reevaluate proposals, 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 applicable statutes and regulations. An offeror’s mere disagreement with the agency does not render the evaluation unreasonable. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4.

JCI protests its unsatisfactory rating under the project management subfactor. With regard to the project management subfactor, offerors were advised that “[t]he technical proposal must include necessary information to enable evaluators to form a concrete conclusion of the offeror’s ability to perform complete project management of required construction.” RFP at 25. One of the elements to be assessed under the project management subfactor was whether the offeror has “experienced managers, supervisors, and administrative support personnel with the technical and administrative abilities needed to meet contract requirements.” Id. at 26. The record reflects that the unsatisfactory rating under the project

management subfactor was due to a number of deficiencies in JCI's proposal, as well as JCI's responses to questions during the presentation/discussion session.

For example, the agency found that JCI's proposal was confusing as to the offeror's organizational structure for performing the work required, including "who the actual superintendent for this project would be," and that the individual whom JCI appeared to propose as its project manager lacked actual "construction field management experience." AR, Tab 28, Summary Evaluation Report of the SSEB, at 6. In this regard, JCI's initial proposal included an organizational chart identifying one individual as the "project superintendent," to whom the "project management team," subcontractors, and operations personnel, such as the managers of the concrete, asphalt, and earthwork divisions, would report. However, the individual identified as the project superintendent was, on the next page of JCI's proposal, identified as the "project manager" without any explanation. AR, Tab 9, JCI's Proposal, vol. 3, at 9-10. Accordingly, the agency requested that JCI "provide complete information regarding the project management team that will be utilized on this project." AR, Tab 19, Agency Letter to JCI (Aug. 17, 2001).

The protester responded to the agency's request by simply stating that the individual previously identified as, alternatively, the project manager and project superintendent, would actually serve as only the project manager, and that another individual who had previously been identified in JCI's proposal as its earthwork superintendent, who was to report to the earthwork division manager (who was in turn to report to the project manager/superintendent), would actually serve as JCI's project superintendent. AR, Tab 23A, JCI's Revised Proposal (Aug. 27, 2001), at 3; see AR, Tab 9, JCI's Proposal, vol. 3, at 9. JCI added here that "[t]he Project Team organizational chart is attached," but the attached chart continued to list the person now identified as the project manager as, instead, the project superintendent, and the person now identified as the project superintendent as, instead, the earthwork superintendent. AR, Tab 23A, JCI's Revised Proposal (Aug. 27, 2001), at 3, 9.

The protester's presentation/discussion session did little to alleviate the agency's concerns and confusion regarding JCI's proposed project manager, project superintendent, and organizational structure for this project. The individual JCI had now identified as its project superintendent/earthwork superintendent did not attend the presentation/discussion session, and the individual now identified as the project superintendent/project manager did not, in the agency's view, demonstrate an understanding of the specifications and was found to have no previous construction field management experience. AR, Tab 28, Summary Evaluation Report of the SSEB, at 6.

Given the agency's continuing confusion with regard to JCI's organizational structure and the actual duties to be performed by JCI's proposed project manager/project superintendent and project superintendent/earthwork superintendent, the agency requested after the completion of JCI's presentation/discussion session that this be clarified. Id. The protester responded by stating that the individual now identified

as its project manager/project superintendent would be the agency's "administrative contact on the project," and that the individual who continued to be identified on JCI's organizational chart as the earthwork superintendent would "serve on this project as [JCI's] Project Superintendent, and will be responsible for the day-to-day field direction." AR, Tab 25A, E-mail from JCI to the Agency (Sept. 4, 2001).

The protester asserts that the respective roles of the project manager/project superintendent and project superintendent/earthwork superintendent were adequately clarified by the organizational chart submitted with its revised proposal, and its September 4, 2001 e-mail. We disagree.

As noted, the organizational chart submitted with the protester's revised proposal, as well as the most current organizational chart submitted by JCI, continue to list the individual JCI now asserts will serve as its project manager as the project superintendent, and the individual JCI asserts will serve as the project superintendent "responsible for the day-to-day field direction" as only the earthwork superintendent. Given the confusion created by JCI's conflicting submissions and explanations regarding its organizational structure for this project, and specifically which individuals would be serving in which roles, we have no basis to object to the agency's view that this aspect of JCI's proposal remained of considerable concern, and find that this concern reasonably supported JCI's proposal's unacceptable rating under the project management subfactor.

The protester asserts that the agency's conclusion that the project manager/project superintendent lacks "previous construction field management experience" is unfounded. In this regard, the protester points out that, as described on the project manager/project superintendent's resume, his experience includes serving as a "project engineer" for the Department of Public Service, Wayne County, Michigan, where his duties included "[a]cting as the owner's representative" for a \$42 million project at the Detroit Metropolitan Airport that involved the "construction of a 1000[-]foot tunnel." See AR, Tab 9, JCI's Proposal, at 10.

The agency explains that JCI's project manager/project superintendent's experience is as a contract administrator and "owner's representative," and that there is nothing in the record to suggest that in those capacities JCI's project manager/project superintendent had ever managed a construction project as a contractor, as is contemplated here. See AR, Tab 28, Summary Evaluation Report of the SSEB, at 6; Tab 31, Source Selection Decision, at 3. Although we agree that JCI's proposed project manager/project superintendent appears to have considerable experience as a contract administrator and owner's representative, that does not render unreasonable the agency's concern that the individual has never managed a construction project as a contractor representative.

The protester further argues that the agency's criticism of the project manager/project superintendent's experience on the basis that he lacks on-site experience is irrelevant, given that the project manager/project superintendent's

responsibilities consist of project administration and coordination, and JCI intends to use the individual identified in its proposal as the earthwork superintendent/project superintendent “to run the field operations.” The protester’s assertions here do not render the agency’s conclusions unreasonable, given the confusion created by the protester’s proposal, as detailed above, regarding who would serve as the project manager and who would serve as the project superintendent.

The record also evidences that the agency considered the protester’s responses in the presentation/discussion session in determining that the firm’s proposal was unacceptable under the project management subfactor because these responses did not demonstrate that the protester had an acceptable approach to the project that demonstrated knowledge and understanding of the project. AR, Tab 31, Source Selection Document, at 3. As noted, the competitive range offerors were expressly advised that purpose of the session was for the offerors to present their understanding and approach to the project. AR, Tab 21A, Agency Letter to JCI (Aug. 20, 2001). Notwithstanding this advice, JCI’s presentation did not, in the agency’s view, demonstrate its understanding of the project, and JCI’s responses to a number of the agency’s questions did not assuage, but instead exacerbated, the agency’s concerns in this respect.

For example, JCI’s proposed concrete division manager conceded during the presentation/discussion session that he had not read a section of the RFP’s specifications relating to the workability and consistency of the concrete to be used in paving the runway. AR, Tab 28, Summary Evaluation Report of the SSEB, at 6; Tab 31, Source Selection Decision, at 3. The agency has provided a detailed explanation as to the differences between the specifications applicable to the project here, an Air Force runway, and those applicable to commercial runway projects, and the critical role of the RFP’s specifications regarding the workability and consistency of the concrete in ensuring that the project is successfully completed and that the runway meets the agency’s minimum needs. Agency’s Supplemental Report, Tab 5, Letter from the Senior Pavement Engineer (Dec. 20, 2001).

The protester concedes that its proposed concrete division manager stated during the presentation/discussion session that he had not read a section of the RFP’s specifications relating to the workability and consistency of the concrete to be used in paving the runway. The protester appears to argue, however, that it should not have been downgraded under the project management subfactor for this because, even though the concrete division manager had not read this section of the specifications, he nevertheless answered a question regarding the workability and consistency of the concrete correctly.

We agree with the agency that whether JCI’s concrete division manager correctly answered the agency’s question during the presentation/discussion session regarding the workability and consistency of the concrete to be used in paving the runway is irrelevant to the agency’s concern that the concrete division manager had not read a

critical section of the specifications for which this individual would be responsible. That is, the fact remains that at least through the submission of JCI's proposal, revised proposal, and the presentation/discussion session, JCI's proposed concrete division manager had not read a key aspect of the specifications. Thus, the agency's concerns here that the protester may not fully appreciate or understand the project are, in our view, reasonably based.

In sum, as illustrated by the foregoing examples, given the extent of the deficiencies in JCI's proposal, and JCI's responses to questions at the presentation/discussion session, the agency's evaluation of the protester's proposal as unacceptable under the project management subfactor to the technical factor, and thus unacceptable overall, were reasonable.²

The protester also argues that the agency acted improperly by allowing only eight JCI representatives to attend the presentation/discussion session and limiting the presentation portion of the presentation/discussion session to 30 minutes. These protest contentions are untimely raised and will not be considered.

In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (2001). Here, as set forth above, the agency specifically advised offerors in the letters of August 17 and 20 that, notwithstanding the RFP's statement that the agency intended to evaluate proposals and award a contract without discussions with offerors, the agency had determined that a presentation/discussion session with each offeror would be conducted. The August 20 letter specifically advised offerors that the presentation/discussion would "consist of a 30[-]minute presentation of your understanding and approach" to the project, and that "[a]fter your presentation, the members of the Source Selection Team will have a 30[-]minute question/answer period with your team." AR, Tab 21, Agency Letters to Offerors (Aug. 20, 2001). These letters also provided that a "maximum of eight persons" may attend the meeting on behalf of each offeror. *Id.* Accordingly, JCI's post-award challenge to the agency's time and attendance limits for the presentation/discussion session constitutes a protest of an alleged apparent solicitation impropriety which was

² The protester argues that the agency's evaluation of its proposal under the remaining subfactors to the technical evaluation factor, the past performance factor, and the price factor, and the selection of the awardee's higher-priced proposal for award, were unreasonable. Since the agency properly found JCI's proposal technically unacceptable, and thus ineligible for award, we need not address these issues. Manufacturing Eng'g Sys., Inc., B-278074, B-278074.2, Dec. 23, 1997, 99-2 CPD ¶ 58 at 7.

required to be filed, but was not, prior to the next closing date for receipt of revised proposals. Oregon Iron Works, Inc., B-284088.2, June 15, 2000, 2000 CPD ¶ 119 at 6; McDonald Welding & Machine Co., Inc.–Recon., B-224014.2, Sept. 5, 1986, 86-2 CPD ¶ 269 at 2.

The protester also complains that the presentation/discussion sessions were not recorded. FAR § 15.102(e) requires that agencies maintain a record of oral presentations. The source selection authority selects the method of recording, and FAR § 15.102(e) gives the following examples: videotaping, audio tape recording, written record, government notes, and copies of briefing slides or presentation notes. Although the FAR does not require a particular method of establishing a record of what was said or occurred during oral presentations, the principle of government accountability dictates that an agency maintain a record adequate to permit meaningful review. Checchi and Co. Consulting, Inc., B-285777, Oct. 10, 2000, 2001 CPD ¶ 132 at 6.

Here, the contemporaneous record of JCI's presentation/discussion session consists of the handwritten notes taken by the SSEB. JCI did not provide the agency with any presentation materials, such as slides, during its presentation/discussion session, and during the course of this protest has not submitted to our Office any contemporaneous evidence of the content of the session. Given that "government notes" are specifically mentioned in FAR § 15.102(e) as a permissible method of maintaining a record of oral presentations, and the lack of any prejudicial disagreement between the parties as to what was said during JCI's presentation/discussion session, the protester's complaint here provides no basis to challenge the award.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ JCI protests that the agency erred in not having the source selection authority (SSA) attend the presentations/discussions. We are unaware of any requirement that an SSA attend presentation/discussion sessions, and in any event, as explained above, our review of the record leads us to conclude that the agency's treatment of JCI during the presentation/discussion session, evaluation of its proposal, and selection of the awardee's proposal as representing the best value to the government, are unobjectionable.