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Decision

Matter of: MINACT, Inc.

File: B-400951

Date: March 27, 2009

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DIGEST

1. Protest that evaluation improperly included undisclosed criteria concerning milestones for meeting Job Corps Center capacity and compensation sufficient to attract and retain personnel is denied, where both matters were clearly encompassed by solicitation evaluation provisions.
 2. Evaluators' decision not to raise protester's evaluation score based on revised proposal, which resolved weaknesses and added strength, was unobjectionable where evaluators reasonably concluded that revisions only demonstrated compliance with minimum solicitation requirements.
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DECISION

MINACT, Inc., of Jackson, Mississippi, protests the award of a contract to Dynamic Education Systems, Inc. (DESI), of Phoenix, Arizona, under request for proposals (RFP) No. S09F6LA009, issued by the Department of Labor (DOL) for operation of the Carville (Louisiana) Job Corps Center (JCC). MINACT challenges the evaluation of its proposal.

We deny the protest.

Job Corps is a national residential training and employment program administered by DOL to address barriers to employment faced by disadvantaged youth throughout the United States. Job Corps provides comprehensive career development services to students, including academic, career technical, social and independent living

skills, career readiness training, and support services. The RFP sought proposals to provide all material, services, and necessary personnel to operate the Carville JCC, as well as to provide outreach/admission services and career transition services.

The RFP contemplated the award, on a “best value” basis, of a cost-reimbursement contract for a 2-year base period, with 3 option years. Proposals were evaluated under the following technical factors (worth 100 total points): technical proposal (42 points; subfactors--outreach (5 points), admissions (8 points), career preparation period (CPP) (7 points), career development period (CDP) (9 points), administrative/management (A&M) support services (5 points), and career transition services (8 points)); staffing resources (20 points); past performance and experience (25 points); subcontracting plan (5 points); cost justification (8 points); and transition/phase-out (0 points). Offerors whose proposals were included in the competitive range would participate in an oral presentation to be evaluated under the management approach factor, worth a possible 20 additional points.¹ Under the cost justification factor, proposals were evaluated to determine whether proposed costs were fair and reasonable relative to the technical proposal, and included a cost realism analysis to determine the most probable cost to the government. Non-cost factors were significantly more important than cost.

Four offerors, including MINACT and DESI, submitted proposals, which were reviewed by an evaluation panel. Based on this initial evaluation, the proposals of MINACT, DESI, and a third offeror were included in the competitive range, and all three firms made oral presentations and participated in discussions. Each offeror was provided with a written list of concern statements (discussion questions) and given an opportunity to submit final proposal revisions (FPR). After reviewing the FPRs, the evaluation panel reached a final consensus rating for each proposal, with DESI's receiving the highest technical score of 79.16, and MINACT's receiving the second highest score, 70.08 points. Citing DESI's lowest proposed cost and higher

¹ In practice, the evaluators rated proposals adjectively under each factor, based on which, proposals would receive a specified percentage of the available points--exceptional (100%), very good (75%), satisfactory (50%), marginal (25%), and unacceptable (0%). Thus, for example, a proposal rated very good (75%) under the management approach factor (20 possible points) would be scored with 15 points. MINACT objects that the use of adjectival ratings was not disclosed in the RFP, which referred only to point scores. However, an agency reasonably may use adjectives in combination with a point scoring system set forth in an RFP. See Southern California Eng'g, Inc., B-296244, July 11, 2005, 2005 CPD ¶ 134 at 3 n.4. In any event, the record confirms that the SSA did not rely solely on the point scores (or adjectives), having reviewed the initial and final technical evaluation reports, which contained compilations of the underlying strengths and weaknesses of each offeror's proposal, prior to making her source selection. Contracting Officer's Statement, ¶¶ 13, 18; Hearing Transcript (Tr.), Mar. 3, 2009, at 88, 104, 298-99.

technical score, the contracting officer, as source selection authority (SSA), found that DESI's proposal represented the best value, and thus made award to DESI. Following a debriefing, MINACT filed this protest.

MINACT challenges the evaluation on numerous grounds, and concludes that its proposal score is not supported by the record. In MINACT's view, had its proposal been properly evaluated, it would have received perfect scores under every factor evaluation it has challenged, resulting in a score higher than the awardee's, and thus leading to a different source selection. In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. We have considered all of MINACT's arguments and find that they provide no basis to object to the award. We address MINACT's most significant arguments below.

UNDISCLOSED EVALUATION CRITERIA

MINACT asserts that, in evaluating its proposal, the agency applied numerous undisclosed criteria, including some contained in the agency's procurement panel guide (PPG), which was used by the evaluators, but not released to the offerors. Protest at 11-12; Comments at 4-11. MINACT maintains that it was unreasonable for the agency to downgrade its proposal based on these undisclosed criteria.

In evaluating proposals, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4.

We find that all of the allegedly undisclosed criteria were reasonably related to or encompassed by the stated criteria. For example, MINACT asserts that it was improper for the agency to assess a weakness under the admissions technical subfactor for failing to detail how it would attain and maintain [deleted] percent on board strength (OBS), since this was not specifically identified as an evaluation criterion. In our view, the weakness was reasonably evaluated consistent with the identified admissions subfactor. The RFP specifically provided that the JCC "shall [be operated] at an estimated planned average [OBS]," as specified in the statement of work, and that the contractor "shall be continually prepared to receive a sufficient number of students to maintain the average [OBS] . . . and a surge capacity of 103 percent." RFP, § C, at 6. As one of 12 questions relevant to the admissions subfactor, the RFP specifically asked offerors to identify the "systems and procedures" they would use to "ensure achievement of arrival goals," and the "milestones and objectives" they would use to drive that performance. RFP, § L, at 113. In its initial proposal, MINACT proposed to meet the standard but, notwithstanding the RFP guidance, did not provide any milestones for reaching and maintaining [deleted] percent OBS. Agency Report (AR) at 1333. Thus, during

discussions, the agency specifically asked how MINACT would “attain and maintain [deleted] % OBS,” AR at 1545; MINACT’s FPR still was found not to provide any milestones for accomplishing its goal. AR at 1333. Based on this analysis, the agency’s evaluation was clearly encompassed by the stated evaluation criteria—and then further reinforced by the discussion question—which specifically referred to OBS strength and the milestones to drive performance.

As another example, MINACT notes that the agency evaluated its cost proposal by considering whether its proposed salary structure and compensation plan were well designed and, if inconsistent with National Survey Data (NSD), were well justified and would enable the contractor to attract, retain, and reward qualified staff. Comments at 6; Supplemental Agency Report (SAR) Comments at 11. MINACT asserts that it was improper to use these criteria because they came from the PPG and not from the RFP, which did not refer to the NSD. Comments at 6. This argument is without merit. These areas were clearly covered by the cost justification factor. The RFP called for offerors to provide a total compensation plan, which was to include a description of salaries, fringe benefits, any bonuses, monetary awards, and other contingent payment plans for all contract staff. RFP, § L, at 121. The RFP also called for offerors to give consideration to the National Job Corps Staff Compensation (NJCS) Report (RFP, attach. J-17), which includes fringe benefit target percentages, *id.*, and specifically provided that the total compensation plan would be evaluated to “ensure that this compensation reflects a sound management approach,” and “in terms of enhancing recruitment and retention of personnel.” RFP, § M, at 137. This language from section M of the RFP, on its face, clearly was sufficient to put offerors on notice that the evaluation would include consideration of whether offerors’ proposed salary structure and compensation were well designed to achieve sound management and enhanced recruiting and retention. (Although the PPG erroneously refers to consistency with NSD information, instead of the NJCS Report, the agency explains that the evaluators were aware that the proper standard was the latter report, and there is nothing in the record to indicate that they applied the wrong standard. Contracting Officer’s Statement, ¶¶ 10, 24.)

TECHNICAL SUBFACTORS

MINACT asserts that the agency unreasonably failed to increase its proposal’s evaluation score based on its FPR, even though, in MINACT’s view, its FPR eliminated most of the assessed weaknesses in its initial proposal and resulted in some added strengths under four technical subfactors—CDP, CPP, outreach, and A&M support.

The agency’s failure to increase MINACT’s score was unobjectionable. For example, MINACT challenges the agency’s failure to raise its score in 3 of the 11 areas evaluated under the CDP subfactor. In this regard, the RFP required all academic and vocational instructors to be certified, licensed, or accredited by the state where the JCC was located, or by a professional trade association. RFP, Policy and Requirements Handbook (PRH), at 2477. The fourth question (the proposal

requirements were set forth in a series of questions) asked what program certifications would be offered and how staff and student attainment would be validated to meet certification requirements. RFP, § L, at 114. Only one of the evaluators assessed MINACT's initial proposal a weakness under this question, based on a lack of information about required staff certifications to ensure that training programs were certified. AR at 1348. The RFP also required each student to complete 360 hours of work-based learning (WBL). RFP, PRH, at 2084. Question six asked how the 360-hour WBL experience would be structured for all students. RFP, § L, at 114. Both evaluators assessed a similar weakness under this question because MINACT's initial proposal did not address all 360 hours of WBL training. AR at 1350, 1447. Question nine under the CDP subfactor asked offerors to address how they would enhance students' social development through an expanded training day, and how all staff would be involved in student development through a positive normative culture.² RFP, § L, at 115. Both evaluators assessed a similar weakness under this question, finding that MINACT's initial proposal failed to provide any information as to how the [deleted] program would expand the training day as it related to career technical training; the proposal itself noted that the expansion was a [deleted]; and the proposal was not clear as to when certain meetings would be held or how the residential staff would be involved. AR at 1353, 1450.

In evaluating MINACT's FPR, both evaluators found that all of the weaknesses had been corrected and, as to the social development weakness, assessed a strength for MINACT's proposal of several initiatives.³ AR at 1353, 1450. However, while the evaluators found that the additional information demonstrated that MINACT would meet the RFP's requirements, they also found that it did not strengthen the proposal, and concluded that there thus was no basis for changing their ratings. AR at 1344, 1438. For example, at the hearing conducted by our Office in this matter, the first evaluator testified that he did not change MINACT's proposal scores because, as to the first two weaknesses, he believed that the changes simply reflected the offeror's bringing its proposal up to the RFP requirements, with nothing added beyond the requirements. Tr. at 205-06. Further, while he upgraded the third weakness to a strength, he did not change the score because he found that it did not "improve the proposal as a whole." Tr. at 209. The evaluator elaborated that he evaluated a proposal "based on all the material that was in the proposal, not based just on the weakness[es] or strengths . . . [t]here was a lot of material that is neither a weakness, nor a strength, but satisfactory," and "when I assessed the entire proposal, it was a satisfactory proposal." Tr. at 210-11.

² A positive "normative culture" is built around integrity, respect, accountability, and safety. RFP at 115.

³ The second evaluator noted MINACT's response to the other evaluator's concerns under question 4, but did not change his score because he believed the original proposal had answered any concern. AR at 1445; Tr. at 148.

MINACT asserts that the evaluators' contemporaneous reasons for not increasing its score are invalid and fail to provide a rational basis for the evaluation. TRESP Assocs, Inc.; Advanced Data Concepts, B-258322.5, B-258322.6, Mar. 9, 1995, 96-1 CPD ¶ 8 at 4. It further asserts that the evaluators' hearing explanations are both irrational and represent post hoc rationalizations, to be accorded little, if any weight. Post Hearing Comments at 27; see Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

An agency is required to document its judgments in sufficient detail to show that they are not arbitrary. TRESP Assocs, Inc.; Advanced Data Concepts, *supra*. However, in reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties' arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, *supra*, post-protest explanations that provide a detailed rationale for contemporaneous conclusions simply fill in previously unrecorded details, and will generally be considered in our review of the reasonableness of an evaluation, so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

The evaluators' explanations are sufficient to establish a reasonable basis for their evaluations. In this regard, MINACT's argument is based upon a faulty assumption--that its proposal was downgraded based on the assessed weaknesses and that, when the weaknesses were corrected, its proposal score should have been increased by all remaining points--in essence, that it should have received a perfect score. Post Hearing Comments at 28; exh. 27, at 15. There is no basis for this assumption. First, nothing in the RFP indicated that more than a satisfactory score would be assigned proposals meeting the RFP requirements. Absent such an RFP provision, we think it is indisputably reasonable for a proposal to be rated with an adjective of fully satisfactory--rather than very good or exceptional--where the correction of weaknesses results in the proposal's meeting--rather than exceeding--the RFP requirements. This was the approach followed by the evaluators. Tr. at 50, 151, 209. Since, as explained by the evaluators, MINACT's improvements merely brought its proposal up to the expected and satisfactory level, as set forth in the RFP, and were found to provide no value beyond that level, the evaluators could reasonably conclude that the elimination of the identified weaknesses did not warrant a rating above satisfactory. Likewise, we have no basis to question the evaluators' conclusion that the addition of a single strength in 1 of 11 areas reviewed did not warrant an increase in MINACT's score. See Tr. at 155. Certainly, MINACT has not established that the correction of weaknesses and the addition of a single strength warranted a perfect score.

OTHER FACTOR EVALUATIONS

MINACT also challenges the evaluation of its proposal under the staffing resources proposal (SRP), subcontracting plan, and oral presentation/management capability factors.⁴ Specifically, under the SRP factor, MINACT notes that its proposal received less than exceptional ratings under three subfactors—level/adequacy of staffing (satisfactory); staffing qualifications (marginal); and the appropriateness/adequacy of staff development, retention, and incentives (unsatisfactory) even though its FPR resulted in corrected weaknesses and two additional strengths. AR at 1387. Under the subcontracting plan factor, MINACT’s proposal remained unsatisfactory under one subfactor (extent of major program component subcontracting), even though its initial proposal included subcontracting of two minor components and its FPR added the subcontracting of a portion of a major component (Career Development team 2, which included business office technology and health occupations training). AR at 1392-93; MINACT FPR, Subcontracting Plan at 13. Under the management capability factor, MINACT’s proposal was assessed a weakness under the “clear, complete, concrete, and consistent with mission” criterion resulting in a marginal to satisfactory rating, based on its failure to make clear whether its proposed automotive instructor was certified by the National Institute for Automotive Service Excellence (ASE). AR at 1299, 1308. In this regard, even though its FPR stated that its proposed auto maintenance instructor was ASE certified (MINACT FPR at 1742), the evaluators did not change their ratings. MINACT asserts that, if properly evaluated under each subfactor, it would have received exceptional ratings, resulting in a perfect score under each. The agency maintains that there is no basis to change any of the scores.

Based on our review, it appears that there were some errors in the evaluation, and that some score adjustments were warranted under the challenged subfactors. For example, we agree that, since MINACT’s staff apparently met the minimum RFP requirements, their evaluation as marginal, rather than fully satisfactory, was not reasonable. Similarly, since MINACT’s FPR stated that its auto maintenance instructor was ASE certified, the evaluation in this area was erroneous. Further, the

⁴ MINACT asserts that the evaluation of its past performance also was flawed because the agency failed to take into account the firm’s most up-to-date automated past effectiveness report (APER) and the adverse impact of hurricanes Katrina and Rita on its past effectiveness reports. MINACT’s assertions are without merit. The record shows that the contracting officer used the most recent APER available at the time of the evaluation and we do not think that she was required to seek more up-to-date information prior to the time of her source selection, approximately 1 week later. The record also shows that, in scoring MINACT’s proposal very good, the contracting officer did take the effect of the hurricanes into account in her evaluation, and simply was not persuaded that this consideration warranted any increase in MINACT’s score.

record shows that the subcontracting plan evaluator was mistaken as to the impact of MINACT's initial lack of any major component subcontracting and that she failed to notice that MINACT's FPR proposed to subcontract a portion of a major component.

However, there is no basis for finding that MINACT was entitled to perfect scores under any of the challenged evaluations, and it is clear that the scoring changes required would not affect the selection decision. The record shows that, apart from the identified errors, other weaknesses were present in MINACT's proposal, including its failure to propose to subcontract an entire major program component, which would limit any scoring increases to fewer than the nine points separating its score from DESI's. Since DESI's proposal thus would remain technically superior under the evaluation methodology, with a lower cost than MINACT's, and there is no challenge to the cost evaluation, we find no prejudice as a result of the identified errors in the technical evaluation. We will not sustain a protest absent a reasonable possibility that the protester was prejudiced by the agency's actions.

McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

Gary L. Kepplinger
General Counsel